2009 TRIAL MONITORING REPORT AZERBAIJAN

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Organization for Security and
Co-operation in Europe
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Further, the Office stands ready to continue supporting the Government, legal professionals and civil society in further strengthening the rule of law and the respect for human rights in Azerbaijan.

Finally, the Office is particularly grateful to the Governments of Finland, Germany and Norway, which made the implementation of this Programme possible, thanks to their generous extra-budgetary contributions.

List of Abbreviations

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations
UDHR	Universal Declaration of Human Rights
CPC	Criminal Procedure Code of the Republic of Azerbaijan
ECtHR	European Court of Human Rights
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

The Universal Declaration of Human Rights (UDHR),[1] as well as other international instruments, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[2] and the International Covenant on Civil and Political Rights (ICCPR)[3] provide for fair trial guarantees and notably the right of the accused to a fair and speedy trial adjudicated by an independent and impartial tribunal. Under Article 12 of the Constitution of the Republic of Azerbaijan (the Constitution), this right is considered as one of the highest priorities of the State authorities.[4]

In line with the relevant OSCE commitments,[5] as of 1990, OSCE participating States agreed to accept court observers in their own courts from other participating States and non-governmental organisations as a confidence building measure and to ensure greater transparency in the implementation of their common commitments towards fair judicial proceedings.

The Republic of Azerbaijan, with support from the international community, is currently reforming its judicial sector and introducing mechanisms for the development of the rule of law and the respect for human rights. In 2009, the Government of Azerbaijan launched a comprehensive State Programme on the Development of the Justice Sector, to be implemented through the coming years (2009-2013). Likewise, the World Bank Modernisation of Justice project (2006-2011) is currently being implemented by the Ministry of Justice. The latter involves, inter alia, substantive refurbishment of existing court buildings and construction of new ones, which shall improve the courts' infrastructure as a result. Furthermore, within the framework of the World Bank Modernisation of Justice project, the construction of over 20 court buildings and facilities is planned. The construction of the Yasamal District Court building has already begun and the buildings of the Constitutional Court and of the Judicial Legal Council were also supplied with modern equipment. Technical devices and modern software for all courts are planned to be installed in the near future and the number of courts with their own internet site has increased to 19 (from 4 in 2008).

As one of the steps to improve the courts' activities in general and to bring the administration of justice up to international standards, an Administrative Procedure Code[6] has been adopted. It is envisaged that new administrative courts will be established on the basis of specialised economic courts, which will become operational as of 1 January 2011. This will help improving the general courts' efficiency by decreasing the current caseload of district courts.

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[1] UN General Assembly Resolution 217A (III), Paris, 10 December 1948.
[2] Rome, 4 November 1950.
[3] UN General Assembly Resolution 2200A (XXI) of 16 December 1966, which entered into force on 23 March 1976.
[4] "The highest priority objective of the State is to ensure the exercise of the rights and liberties of citizens. The rights and liberties […] listed in the Constitution are implemented in accordance with international treaties to which the Republic of Azerbaijan is a party", Article 12 (I-II) of the Constitution of the Republic of Azerbaijan (1995).
[5] Vienna Document (1989), Copenhagen Document (1990) and Moscow Document (1990).
[6] Law of the Republic of Azerbaijan No. 846-IIQ, 30 June 2009.

There have also been a number of noteworthy measures taken by the Ministry of Justice and other government bodies to strengthen the judiciary, in particular through the continuation of the selection and recruitment process for judges. The judge selection process was resumed at the end of 2008 and consisted of a multiple-choice test and written examinations, as well as oral interviews monitored by local and international observers. In 2009, 80 judge candidates (out of a total of 440 applicants), who have successfully passed this process, were enrolled in a long-term training at the Justice Academy. The open and democratic process established by these judicial selection examinations has demonstrated a commitment to creating a transparent and fair judicial system.

Based on the training curriculum developed by the Selection Committee of Judges, the Judicial Legal Council with the assistance of the OSCE, the Council of Europe, the German Technical Cooperation (GTZ) and other international organisations provided intensive training for the selected judge candidates. In addition, these 80 judge candidates participated in a two week theoretical and practical training course in Ankara and Istanbul. Moreover, the Training Section of the Judicial Legal Council developed and implemented training programs for judges of first instance courts, which were conducted with the participation of experienced foreign specialists, including experts from the OSCE.

In addition, in April 2009, training sessions were organised within the Justice Academy for court staff, including court clerks from Baku and Sumgayit Courts of Appeal, the Baku Local Economic Court (No.1), the Sumgayit Local Economic Court and the Sumgayit City Court.

According to the Judicial Legal Council, disciplinary measures were also taken against judges who failed to adhere to norms regulating their conduct.

Along with the aforementioned achievements, in 2009, the Azerbaijani Judges Association[7] became an extraordinary member of the International Association of Judges, encompassing 74 national associations from various countries.

In the framework of the ongoing justice reforms referred to above, trial monitoring is one of several instruments for measuring the degree to which new reforms are reflected in practice. In short, trial monitoring is a comprehensive and objective programme carried out in different courts throughout the country. The Trial Monitoring Programmes conducted by the Office so far, including this one, have duly taken into consideration the basic principles underlying OSCE trial monitoring: non-intervention in the judicial process, objectivity and agreement with the relevant State authorities.

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[7] Azərbaycan Respublikası Ümumi Məhkəmə Hakimləri Assosiasiyası.

This report represents the third phase of the Trial Monitoring Programmes that the Office has conducted in Azerbaijan:

- In the first phase, 15 trials on charges related to the violence erupted during public demonstrations in Baku following the Presidential Election on 15 October 2003 were monitored. Upon completion of this first phase of its Trial Monitoring Programme, the Office published a report on the results of this monitoring, conducted between November 2003 and November 2004.

- In the second phase, comprising the period 2006 - 2007, the Programme was widened to include the monitoring of over 500 criminal trials at courts in Baku and Sumgait. The trial monitoring report for the second phase was completed and distributed in April of 2008.[8]

- In the third phase, during the year 2009, the Programme was further expanded to also cover civil cases and include courts in Shaki, Ganja, Shirvan and Lenkoran. Over 1,679 hearings of 1,088 criminal and civil trials were observed from 15 March through 31 December 2009. The monitoring in the third phase was carried out by an Implementing Partner[9] and 16 local monitors, all of whom the Office recruited and trained, with particular focus on the independence, impartiality, objectivity, accuracy and consistency in the reporting process. The work of the Implementing Partner and observers was carried out under the supervision and guidance of the Head of the Rule of Law Unit within the Office.

The findings and recommendations in this report have been discussed on a regular basis with the relevant State authorities of the Republic of Azerbaijan. Optimally, the findings will be used by the Azerbaijani authorities as a diagnostic tool, to evaluate the functioning of the administration of justice in the Country. In addition, the recommendations included in this report have been provided to assist the authorities in their efforts to further improve the administration of justice in Azerbaijan.

The following concerns regarding fair trial standards were noted in the course of the 2009 Trial Monitoring Programme:

- Failure to timely and properly inform the accused about their rights (for example, the nature of the charges, the right to remain silent, the right to appeal, etc.).
- Failure to investigate the accused's allegations of torture or other forms of ill-treatment.
- Problems related to the right to an independent and impartial tribunal, e.g. through exhibiting prosecutorial bias or failure to prevent improper behaviour by the prosecutor towards the accused.

[8] The report can be downloaded from the OSCE website at www.osce.org/baku.
[9] Local NGO: "Tender Monitoring Centre".

- Problems related to the presumption of innocence, e.g. through the practice of keeping the accused shackled and in metal cages in the court room during the court hearings and inappropriate comments by the judge suggesting that the accused was presumed guilty.
- Problems related to the equality of arms, e.g. appearing to give more preference to prosecutor's motions.
- Concerns related to the right of the accused to call, examine and cross-examine witnesses.
- Concerns related to the right to legal assistance, e.g. failure to provide the accused with legal counsel, with advice about the right to free legal aid, or provide the defence counsel with enough time and adequate facilities to prepare the defence.
- Cases where an interpreter was either not provided when needed or when the interpreter was not appointed in accordance with the criteria set forth in Article 99 of the Criminal Procedure Code of the Republic of Azerbaijan (CPC).[10]
- Failure to provide reasoning for judgments, which also impacts on the full exercise of the right of appeal.
- Inaccurate record keeping by the court clerk.

The Office notes with appreciation that some concerns and recommendations made in the latest 2006-2007 Trial Monitoring Report, issued in April 2008, have been effectively addressed by the Government through legislative reforms and other measures, namely the increase in the number of defence lawyers and judges, as well as the refurbishment of court facilities to enable the proper functioning of court rooms. However, it regrets that some other concerns and recommendations have not yet been addressed, particularly those related to the lack of judicial independence and equality of arms. The Office also welcomes the establishment of the Justice Academy, which shall support training programmes for legal professionals, including defence lawyers.

[10] 1 September 2000.

Scope of the Report. Methodology

The goal of the 2009 Trial Monitoring Programme in Azerbaijan was to enhance the capacity of the Government of Azerbaijan to comply with its OSCE commitments regarding respect for the right to a fair trial. In particular, the purpose of the Programme was to monitor court proceedings to identify improvements and shortcomings with regard to the administration of justice in Azerbaijan, to report on the findings to the Azerbaijani authorities on a yearly basis, and to issue recommendations to assist the Government in modernising judicial processes in compliance with OSCE participating State commitments. The Programme also includes a component of capacity building for civil society representatives, by providing technical training on how to monitor and accurately report on trial observation. The Programme further raises awareness of national and international actors on the right to a fair trial and existing violations with a view to further accelerating the improvements of the administration of justice in Azerbaijan.

The Programme has the following main objectives:

- To improve and build public confidence in the administration of justice by fostering transparency of court proceedings;
- To enhance compliance of justice system actors with the right to a fair trial in line with relevant domestic legislation and international standards; and
- To ultimately support ongoing judicial and legal reforms in Azerbaijan by assisting the relevant State authorities, including the Ministry of Justice and the Judicial Legal Council, to identify existing shortcomings, to be addressed by future reforms.

Prior to the commencement of the 2009 Trial Monitoring Programme, the Office informed both the Ministry of Justice and the Judicial Legal Council about the objectives of the Programme and provided them with the list of trial observers, requesting the facilitation of their access to court proceedings.

The Office deployed trial observers (the Project Team) to courts of different levels throughout the Country: 14 observers were permanently based in Baku, covering, *inter alia,* the Court of Grave Crimes and the Baku Court of Appeal. Four observers travelled to different regions of the country (Shaki, Shirvan, Ganja, Lankaran and Sumgayit, including the neighbouring regional courts as well). The role of the Project Team was to monitor attentively and objectively the court proceedings and prepare detailed reports on each court hearing the observers attended. The Project Team did not assess the relevance of the evidence presented in court, evaluate the merits of the case, or determine a defendant’s guilt or innocence. Rather, the Team focused on the courts’ compliance with the accused’s right to a fair trial envisaged both in Article 25 of the Constitution of the Republic of Azerbaijan, as well as in Article 6 of the ECHR.

The right to a fair trial is a long standing universally recognised human right standard and applies in relation to all criminal offences. The fair trial standard is guaranteed under the UDHR, the ICCPR and the ECHR. The implementation of the universal fair trial standard in national legal systems is one of the most important steps taken by individual States to ensure that each person has legal protection from arbitrariness and abuse of power by the State's authorities. This right entails observance of, and compliance with a number of procedural requirements and guarantees that are inherent in due process, including: 1) the requirement that the proceedings be conducted expeditiously by the tribunal or court, without undue delay;[11] 2) the right of the defendant to be present at the trial and to be heard in person;[12] 3) the right to competent defence, including adequate opportunity for the accused to respond to the charges against him/her; 4) the principle of equal procedural rights or "equality of arms" between the parties to the proceedings; 5) the principle of adversarial proceedings; [13] and (6) the right to legal assistance.

As with all articles of the ECHR, Article 6 has been interpreted by the European Court of Human Rights (ECtHR) in its case-law. This case-law defines the content of the conventional rights and duties, and has particular importance for their implementation by the States parties. Both the conventional provisions and the case-law of the ECtHR are an integral part of national legislation of the Republic of Azerbaijan.[14]

In addition to the ECHR and the judgments of the ECtHR, the cases were also monitored from the perspective of their compliance with the standards and obligations of the following instruments and documents:

- International Covenant on Civil and Political Rights
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) [15]
- Constitution of the Republic of Azerbaijan (1995)
- Criminal Procedure Code of the Republic of Azerbaijan (2000)
- OSCE Commitments

For each case, the trial monitors completed a trial report form which assessed the compliance of judicial operations aspects of the trial with domestic legislation and with European regional and international legal obligations, from the initial point of detention to the completion of the first instance trial.

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[11] See United Nations Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, para. 27.
[12] See *Botten v. Norway,* ECtHR Judgment of 19 February 1996, para. 53.
[13] See United Nations Human Rights Committee, Views adopted on 26 March 1992, *D. Wolf v. Panama*, Communication No. 289/1988, para. 6.6.
[14] Articles 148 (II) and 151 of the Constitution of the Republic of Azerbaijan and the Ruling of the Plenum of the Supreme Court No. 5 On the Implementation of the Provisions of the European Convention on Human Rights and Fundamental Freedoms and Case-Law of the European Court of Human Rights, dated 30 March 2006.
[15] 10 December 1984.

While the monitors randomly selected the court proceedings to be monitored, on a case by case basis, the Project Team also observed especially sensitive cases involving journalists, civil society representatives, human rights defenders, and members of opposition political parties.

Each observer reported daily on the monitoring results and submitted the trial monitoring forms to the Rule of Law Unit of the Office for final review and inclusion in the interim trial monitoring reports. The Rule of Law Unit conducted additional legal analysis of the results of the trial observation to determine which fair trial standards might have been violated. The Office organised regular meetings with stakeholders to follow up on the development of the Trial Monitoring Programme and address any issues at stake with the Implementing Partner and the trial observers.

Based on the reporting of the Project Team regarding the trial observation carried out between March and December 2009, the Office produced three Trial Monitoring Interim Reports:

- the 1st Interim Trial Monitoring Report for the period of 15 March to 15 May 2009,
- the 2nd Interim Trial Monitoring Report for the period of 15 May to 15 September 2009, and
- the 3rd Interim Report covering the remaining period until the end of December 2009.

On 30 June 2009 and 5 March 2010, the Office organised meetings with representatives of State authorities, members of the judiciary, of the Prosecutor's Office and of the Bar Association. Prior to these meetings, the Office had sent out copies of the preliminary findings to the parties attending. The purpose of these meetings was to provide the stakeholders with an opportunity to comment on the preliminary findings in a broader forum, and to ensure full accuracy of the information to be included in the final trial monitoring report.

I. Observance of Fair Trial and Rights of the Defendants

1. The Right to a Public Hearing

Article 6 (1) of the ECHR states:

> "*In the determination of his civil rights and obligations or of any criminal charge against him [or her], everyone is entitled to a … public hearing … Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice*".

The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret with no public scrutiny. It is also one of the means whereby public confidence in the courts, from the district court to the Supreme Court, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 (1) of the ECHR, a fair trial, the guarantee of which is one of the fundamental principles of the rule of law, which is required for any society to be truly democratic, within the meaning of the Convention.[16]

In each case, the form of publicity to be given to the "judgment" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 (1) of the ECHR.[17] The ECtHR considers that a trial complies with the requirement of publicity only if the public is able to obtain information. This will be fulfilled by the simple fact that a hearing is held in a regular courtroom large enough to accommodate spectators. Therefore, the ECtHR observes that the holding of a trial outside a regular courtroom, in particular in a place like a prison, to which the general public in principle has no access, presents a serious obstacle to the trial's public character. In such a case, the State is under an obligation to take compensatory measures in order to ensure that the public and the media are duly informed about the place of the hearing and are granted effective access.[18]

The limitations of the right to a public hearing are expressly provided in Article 6 (1) of the ECHR. In each case where the court wants to limit the public's access to the courtroom, this can only be done if it is "*strictly*

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[16] See *Pretto and Others v. Italy*, ECtHR Judgment of 8 December 1983, para 21; *Axen v. the Federal Republic of Germany*, ECtHR Judgment of 8 December 1983, para 25; *Sutter v. Switzerland*, ECtHR Judgment of 22 February 1984, para 26.

[17] See *Pretto and Others v. Italy*, ECtHR Judgment of 8 December 1983, para 26.

[18] See *Riepan v. Austria,* ECtHR Judgment of 14 February 2001, para 29.

required by the circumstances".[19] Although not expressly provided, this implies the national judge in each case clearly explaining why the public should not be allowed access to the hearing. However, the ECtHR did not find a violation when the State designated an entire group of cases as an exception to the general rule, where considered necessary in the interests of morals, public order or national security or where required by the interests of juveniles or the protection of the private life of the parties, although the need for such a measure must always be subject to the ECtHR's control.[20]

Under Articles 127 (V) of the Constitution and 27.1 of the CPC, court hearings in criminal cases shall be held publicly in all courts of the Republic of Azerbaijan. The CPC provides for limitations similar to those of the ECHR on the right to a public hearing, namely for reasons related to public order, national security, the interests of juveniles or the protection of the private life of the parties, to the extent strictly necessary in the opinion of the court when publicity would prejudice the interests of justice.

In addition, Azerbaijan, as an OSCE Participating State, has agreed to the OSCE commitment to respect and implement fair trial standards in its courts.

> *The participating States will ensure] the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, including the right to present legal arguments and to be represented by legal counsel of one's choice;*[21]
>
> *[I]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;*[22]

The Trial Monitoring Programme in 2009 has revealed that the right to a public hearing is generally observed by courts in Azerbaijan. In the majority of the courts monitored, information on the time and venue was properly displayed. Observers indicated that most courts provided adequate facilities for the attendance of the hearings by interested parties or members of the public. On the other hand, monitors raised concerns about the quality of the displayed information regarding the observed court hearings, obstacles to access court buildings and court rooms, and the practice of holding trials privately in judges' offices rather than in a public court room.

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[19] See *Diennet v. France,* ECtHR Judgment of 26 September 1995, para 34.
[20] See *B and P v. the United Kingdom*, ECtHR Judgment of 24 April 2001, para 39, referring also to *Campbell and Fell v. the United Kingdom*, ECtHR Judgment of 28 June 1984, paras 87-88; and *Riepan v. Austria*, ECtHR Judgment of 14 February 2001, para 34 regarding the court's control.
[21] OSCE Commitments, Right to a fair trial, Vienna Document (1989) "Questions relating to Security", para 13.9.
[22] OSCE Commitments, Right to a fair trial, Copenhagen Document (1990), para 5.16.

As for *displaying information on the court hearings*,[23] in the majority of the courts monitored, the information on the time and venue was properly displayed. Monitors identified problems with the Court of Grave Crimes, Shaki City Court and Shirvan City Court, which did not display information related to hearings at all. While the Shaki and Shirvan City Courts improved towards the end of the Trial Monitoring Programme, at the Court of Grave Crimes monitors were only able to obtain the information related to hearings from the court staff (court's registry) throughout the monitoring period, and not through openly accessible display of the information, as it should be. The Shaki Court of Appeal and the Baku Court of Appeal[24] displayed information only about civil cases during the reporting period.

The Project Team further noted some concerns about restrictions in accessing the Shaki Court of Appeal. The court building was secured by police personnel, who allowed only parties to the court case (including the accused' relatives) access to the court building during the hearings. Other than the representative of the Project Team, no other member of the public was allowed to enter the court premises. Similarly, in another case, the Project Team reported that both its representative and a representative from the international community were denied access to the Supreme Court on 30 April 2009. Although the hearing was not closed, access was denied by court staff without any explanation. Since the Project Team did not have any problems with access to the court in later hearings, this was considered an isolated incident.

While the Project Team observers indicate that most courts provided adequate facilities for the attendance of the hearings by interested parties or members of the public, there were hearings where limited facilities of the court halls prevented a large number of public from attending the hearings. The Project Team also noted a few cases where hearings were held in the *judges' offices*. For example, observers reported that at the Khatai District Court[25] and Shirvan City Court[26] hearings on less serious offences were conducted in the judges' offices, which, of course, is a fair trial violation in itself, as judges' offices are not a public place. In addition, the observance of the trial was impeded by the room size, the number of seats available, etc.

2. *Presence at Hearings: Defendant, Defence Counsel and Prosecutor*

The presence of the accused at the hearing is an important part of the right to a fair trial. To comply with the principle of equality of arms and the adversariality of proceedings, both sides should be entitled to be heard

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[23] See *Artico v. Italy*, ECtHR Judgment of 13 May 1980, para 29.

[24] Information on pending cases at the Baku Court of Appeal is available at the court's webpage, http://www.bakuappealcourt.gov.az.

[25] Case of Elnur Ahmadov, charged under Article 221.1 of the Criminal Code – hooliganism, 27 April 2009; case of Kenan Behbudov, charged under Article 263.1 of the Criminal Code – hooliganism, 28 April 2009; case of Ramiz Ismaylov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 29 March 2009; case of Nurlan Karimov, charged under Article 176.1 of the Criminal Code – intentionally not supporting dependent children and/or parents, 29 March 2009; case against Tehran Javadov, charged under Article 317-1.2 of the Criminal Code – possession of prohibited items by a person in detention, 12 May 2009.

[26] Case of Chingiz Guliyev, charged under Article 294.1 of the Criminal Code – fraud of evidence, hearings on 30 March and 07 April 2009.

and have the opportunity to comment on the other party's arguments and evidence. The right to be present at one's proceedings implies that the defendant must be present at all trial hearings.[27]

The ECtHR has stated that under certain exceptional circumstances a criminal case is permitted in the absence of the accused, provided that the authorities have acted diligently in notifying the accused of the hearing, but still were not able to reach him/her.[28] Furthermore, hearings without the presence of the accused may be allowed in the interest of the administration of justice in some cases of illness, provided that the defence counsel of the accused is present during the hearing.[29]

Article 311.2 of the CPC provides for the following exceptions from the rule of the accused being present at the hearing: the accused intentionally avoids attending the hearing while out of the country (Article 311.2.1), or the accused, charged with minor offences, has applied in writing for the charges against him to be examined without his participation (Article 311.2.2.). The participation of the defence counsel at the hearing is compulsory in these two exceptional cases (Article 311.3).

Generally, the Project Team concluded that the right of the accused to be present at the court hearing is respected, the hearings were as a rule postponed by the judges in case of the accused's absence. Similarly, the hearings were usually postponed when the prosecutor or the defence lawyer were absent. However, during the monitoring period, there were a few exceptions noted, when the prosecutor or the defence counsel were absent. The monitors did not observe any hearing where the accused was absent.

Absence of the defence lawyer:

On 7 July 2009, the hearing on the case against Tural Atakishiyev, Parviz Alihasanov and Khayal Abdullayev, all charged under Articles 221.1 and 315.1 of the Criminal Code of the Republic of Azerbiajan (Criminal Code)[30] – hooliganism and resistance to or using violence against a State official in his official capacity, at Ganja Nizami District Court, was held in the absence of defence counsel. This was in breach of Articles 312.3 and 312.5 of the CPC, which establishes that a hearing shall be postponed in case of absence of the defence counsel.

On 14 July 2009, during the preparatory hearing on the case against Shakir Aliyev and Farman Musayev, both charged under Articles 143 and 120 of the Criminal Code – leaving (a person whose life or health is) in danger and deliberate murder, at the Court of Grave Crimes, one of the accused's defence counsels was not present.

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[27] See *Ekbatani v. Sweden*, ECtHR Judgment of 26 May 1988, para 25.
[28] See *Colozza v. Italy*, ECtHR Judgment of 22 January 1985, para 28.
[29] See *Ensslin and others v. the Federal Republic of Germany*, European Commission of Human Rights Decision on admissibility, 8 July 1978, cited in Nuala Mole and Catharina Harby, The Right To A Fair Trial. A Guide To The Implementation of Article 6 of the European Convention On Human Rights, 2nd edition, August 2006, p. 24.
[30] 1 September 2000.

Nevertheless, the judge did not postpone the preparatory hearing, this being a violation of Article 299.10 of the CPC, which clearly states that the participation of the defence counsel at the preparatory hearing is compulsory.

On 26 November 2009, in the case against Vladislav Nazarov, charged under Article 180.1 of the Criminal Code – robbery, at the Sumgayit City Court, the accused appeared at the preparatory hearing without a defence counsel. The judge issued a decision to appoint a defence counsel, who ultimately failed to be present at the hearing. Nevertheless, the judge continued the preparatory hearing in the absence of the defence counsel. The defence counsel was however present at the next hearing on the merits, on 10 December 2009.

3. The Right to be Informed of the Charges and the Right not to Incriminate Oneself

Article 6 (3) a of the ECHR states that everyone charged with a criminal offence has the following minimum rights:

> "*to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.*"

Furthermore, anyone who is arrested or detained should be informed of their rights at the time of arrest, and in particular of their right to: 1) be assisted by a lawyer of their own choice, which means prompt and regular access to that person; 2) be given an appropriate medical examination and to receive medical treatment; 3) inform, or request the authorities to inform, their family or other appropriate persons designated by them of their arrest or detention and where they are being held; 4) communicate with their family and friends, which includes the right to be visited by and correspond with them; and 5) challenge the lawfulness of any deprivation of liberty, by means of *habeas corpus*, constitutional amparo or similar such judicial procedure, before a court or a judge.[31]

Freedom from self-incrimination is "*the right of anyone charged with a criminal offence [...] to remain silent and not to contribute to incriminating himself*".[32] The ECtHR stated in the case of *Saunders v. the United Kingdom*[33] that:

"*Although not specifically mentioned in Article 6 of the ECHR, the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair trial with all necessary guarantees and safeguards under Article 6 of the ECHR. Their rationale lies, inter*

[31] See "Trial Observation Manual for Criminal Proceedings", Practitioners Guide No. 5, International Commission of Jurists.
[32] See *Funke v. France*, ECtHR Judgment of 25 February 1993, para 44.
[33] See *Saunders v. the United Kingdom*, ECtHR Judgment of 17 December 1996, paras 68-69.

alia, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and consequently to the fulfilment of the accused's right to a fair trial. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right is closely linked to the presumption of innocence also regulated by Article 6 (2) of the ECHR".

Under the relevant OSCE commitments, anyone who is arrested shall be informed promptly in a language which he understands of the reason for his arrest, and shall be informed of any charges against him.[34] Also, effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, otherwise to incriminate himself, or to force him to testify against any other person.[35]

Article 91.5.1 of the CPC entitles the accused to be informed promptly and in detail of the nature of the charges against him. Further, under Articles 322.1.11 and 324 of the CPC, the judges shall explain to the accused their rights, including the right not to incriminate themselves. This should be done during both the preparatory hearing and at the beginning of the trial proceedings (hearing on the merits), regardless of the fact that the accused received the notification (summons), with explanation of his/her rights. Furthermore, the CPC requires that the defendant is informed of his/her right to proper defence and the right to defence counsel irrespective of the accused's financial status.[36]

It was reported in several different cases that judges did not inform and explain to the accused their rights on the stated ground that these rights had already been explained during the preparatory hearing and it was therefore not necessary for the judge to do so again during the hearing on the merits, unless explicitly requested by the accused.[37] However, Article 322.1.11 of the CPC establishes that the presiding judge shall explain to the accused his/her rights and duties, as outlined in Article 91 of the CPC and in addition, under Article 324.3 of the CPC, the presiding judge shall also explain the following to the accused:

324.3.1 nature of each charge brought against the accused;
324.3.2 legal qualification of charges and relevant sanctions;
324.3.3 legal grounds for and amount of damages, if so claimed;
324.3.4 that the accused is not bound by any admission or confession made at the pre-trial stage;
324.3.5 that the accused is not obliged to answer questions asked during the trial;

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[34] OSCE Commitments, Right to a fair trial, Moscow Meeting 1991, para 23.1 (ii).
[35] OSCE Commitments, Right to a fair trial, Moscow Meeting 1991, para 23.1 (vii).
[36] See Section V (e) - Right to Legal Assistance, in this Report.
[37] Nizami District Court - case against Ramin Babirov, charged under Article 317-2.1 of the Criminal Code - possession of prohibited items by a person in detention, 13 April 2009; and case against Aydin Huseynov, charged under Article 244.1 of the Criminal Code - Maintaining a brothel, 15 April 2009.

324.3.6 that the refusal to answer any question shall not be interpreted against the accused; and

324.3.7 that the accused has the right to motivate his/her answers.

The CPC clearly establishes an obligation on the presiding judge to inform and explain to the accused his/her rights at the first hearing on the merits. Such duty is to be fulfilled irrespective of whether the accused has been informed of these rights during the preparatory hearing or not.

The Project Team noted several cases when the presiding judge failed to inform the accused of his/her rights and failed to explain these rights, including the right not to incriminate oneself, although adequate information on these rights is crucial for the accused to understand the nature of the charges brought against him/her and to prepare his/her defence. In other instances, the judges simply mentioned that the accused's rights are listed in the court summons, without explaining these rights to the accused. In other cases, judges failed to clarify both, whether the accused were informed of the charges brought against them and whether they had familiarized themselves with the indictment and the investigation materials.

Under Article 303.1 of the CPC, the judge shall discontinue consideration of the case and return it to the prosecutor, if he/she discovers during the preparatory hearing that the pre-trial investigation was carried out with any violations of the provisions in the CPC. Under Article 303.3 of the CPC, such violations include (a) breach of the accused's right to defence,[38] (b) breach of the accused's right to use his native language or right to an interpreter,[39] and (c) breach of the accused's right to become familiar with the investigation materials and indictment before the case has been submitted to the court.[40] If these violations are not remedied, the case cannot be resolved at the trial stage.

Moreover, according to Article 307.1 of the CPC, if the court finds that a violation of legality was committed during the pre-trial investigation, the court shall issue a decision through which these violations are brought to the attention of the appropriate authorities or the prosecutor, so the latter can investigate the allegation of pre-trial violations. The Project Team has rarely noted cases when judges clarified or inquired at the preparatory hearing if any violation(s) occurred during the pre-trial stage, as envisaged in Article 299.3.2 of the CPC.

If the accused has not been provided with a copy of the indictment (irrespective of whether he/she is familiar with the indictment and investigation materials), the hearing shall be postponed and a copy of the indictment shall immediately be provided to the accused in a language he understands. This is established in Article 322.1.10 of the CPC. Notwithstanding this provision, only rare instances of the judge postponing the hearing in order for the accused to be given a copy of the indictment were observed during the Trial Monitoring Programme.

[38] Article 303.3.1 of the CPC.
[39] Article 303.3.2 of the CPC.
[40] Article 303.3.8 of the CPC.

Instances where judges failed to inform the accused of his or her basic rights and to explain these rights, including the right not to incriminate oneself:

- In the case against Khayal Verdiyev and Seymur Adigozalov, charged under Articles 177.2.1, 177.2.2 and 177.2.3 of the Criminal Code – repeated theft by a group of persons committed during unlawful entry, at the Ganja Kapaz District Court on 02 June 2009, the judge failed to explain to the accused their rights and duties outlined in the CPC, including the right not to incriminate themselves.

- In the case against Ragib Ramazanov, charged under Article 132 of the Criminal Code – battery, at Lankaran District Court on 02 July 2009, the judge did not explain to the accused his rights and duties outlined in the CPC, including the right not to incriminate himself.

- In the case against Nizami Mahmudov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgayit City Court on 24 July 2009, the judge failed to explain to the accused his rights and duties outlined in the CPC, including the right not to incriminate himself.

- In the case against Ziya Gulamali, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, at the Sumgayit City Court on 28 September 2009, the judge did not explain to the accused his rights and duties outlined in the CPC, notably the right not to incriminate himself.

- In the case against Ismayil Karimov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, at Sabunchu District Court on 24 September 2009, the judge did not explain to the accused any of his rights and duties, having mentioned that he had explained them during the preparatory hearing. However, according to the Project Team, no information about nor explanation of these rights were provided to the accused at the preparatory hearing, which took place on 15 September 2009.

- In the case against Vladislav Nazarov, charged under Article 180.1 of the Criminal Code – robbery, at the Sumgayit City Court on 10 December 2009, the judge did not explain any of his rights to the accused, including the right not to incriminate himself.

- In the case against Vugar Amirov, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, at Sabunchu District Court on 22 October 2009, the judge did not explain any of his rights to the accused, including the right not to incriminate himself. The same was observed in the case against Mehman Gurbanov, charged under

Article 234.1 of the Criminal Code – illegal possession of drugs, at Sumgayit City Court on 15 December 2009.

Instances where the judge only briefly referred to the fact that the accused's rights are listed in the court summons, without mentioning these rights:

- In the case against Afat Shirinov and Ali Mammadov, both charged under Articles 234.4.1 and 234.4.3 of the Criminal Code - illegal possession by a group of persons of a gross amount of drugs for sale purposes, at the Court of Grave Crimes on 15 April 2009, the presiding judge did not inform the accused of their rights, but only briefly mentioned that such rights were outlined in the court summon which had been issued to the accused before the trial began.

- In the case against Zaur Agayev, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, at Binagadi District Court on 04 June 2009, the judge did not explain his rights and duties to the accused, but instead referred to the court summons.

- In the case against Zaur Alishov, charged under Articles 177.2.1, 177.2.2 and 177.2.4 of the Criminal Code – gross theft committed repeatedly by a group of persons, at Khatai District Court on 23 June 2009, the judge did not explain to the accused his rights and duties. Instead, he said: "*We have sent you the court summon which contained all your rights and duties, are they clear to you*?"

- In the case against Aydin Orujov, charged under Articles 149.2.4 and 157.1 of the Criminal Code – rape committed under threat of murder or other aggravating circumstances and unlawful entry into somebody's place of residence, at the Court of Grave Crimes on 05 August 2009, the judge did not explain to the accused his rights and duties and just asked if he knew his rights. When the accused replied that he did not understand what the judge was referring to, the judge mentioned that all his rights and duties were explained in the court summon and advised him to read the summon.

- In the case against Zaur Hajimammadov, charged under Article 180.2.1 of the Criminal Code – robbery, at the Court of Grave Crimes on 29 July 2009, the judge did not explain to the accused his right not to incriminate himself. Moreover, the judge's explanation did not cover all the rights, as he mentioned only a few of them and referred the accused to the court summon he had received.

- In the case against Ramiz Ismayilov, Akbar Abbasov, Kamran Ismayilov and Amil Mardanov, charged under Article 144.2.3 of the Criminal Code – kidnapping by a group of persons, at the Court of Grave Crimes on 30 July 2009, the judge did not explain the right not to incriminate oneself.

- One more hearing where the same was observed is the case against Zakiyya Hajiyeva and others, charged under Article 178.2.1 of the Criminal Code – fraud, at the Court of Grave Crimes on 30 July 2009. The judge did not explain the rights and duties of the accused in full, but merely mentioned some of them, as they were indicated in the court summon.

Instances where judges failed to clarify if the accused was informed about the charges against him/her and whether s/he had familiarized him/herself with the investigation materials, including the indictment:

- In the case against Ulvi Jabbarov, charged under Articles 221.2.2 and 221.3 of the Criminal Code – hooliganism, at Sabail District Court on 28 July 2009, the judge did not explain to the accused his rights and duties and did not clarify whether or not the accused was provided with the indictment.

- In the case against Tahir Aliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Narimanov District Court on 22 July 2009, at the end of the preparatory hearing, the defence counsel reported that the accused had not been provided with the indictment and other investigation materials to familiarise himself with the case prior to the beginning of the trial proceedings. The judge, nevertheless, considered it sufficient to order the court clerk to provide a copy of the indictment to the accused immediately without further investigating the reported violation of procedural rights.

- Similarly, in the case against Rafik Rzayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Ganja Nizami District Court on 11 June 2009, when the judge asked the accused whether he was familiar with the indictment, the accused explained that he did not understand anything in the indictment as he did not know the Latin alphabet. Nevertheless, the judge disregarded the accused's claim and just considered that the accused acknowledged receipt of the indictment.

- In the case against Fizuli Aliyev and Ilgar Imanov, charged under Article 126.1 of the Criminal Code – deliberately causing serious injuries to health, at the Court of Grave Crimes on 04 August 2009, the judge did not explain to the accused their right not to incriminate themselves.

- In a rather exceptional case, a concern was raised about a preparatory hearing in the case against Gulhuseyn Nuriyev, charged under Articles 228.2.1 and 228.2.2 of the Criminal Code – repeated illegal possession and carrying of fire-arms by a group of persons, at the Sumgayit City Court on 13 March 2009, where the right of the accused to have his basic rights explained to him was neglected by the judge. The defence counsel, having requested the judge in writing to conduct the hearing without his participation, did not attend the preparatory hearing. While the presiding judge agreed to hold the hearing in absence of the defence counsel, he made no efforts to ensure that the accused fully understood the nature of the charges brought against him, nor did he explain the basic rights to the

accused, including the right to effective legal representation (and replacement of defence counsel) and the right to freedom from self-incrimination.

Breaches of the procedure of returning the case for further investigation:

- At Sabunchu District Court, in the cases against Ismayil Karimov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, on 15 September 2009, and against Rasim Guliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, on 09 September 2009, the presiding judges, without asking the trial participants, concluded that there had not been any shortcomings during the pre-trial investigation period.

- In the case against E. Akbarov and Kamran Eybatov, both charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Sabunchu District Court on 29 July 2009, the defence counsel raised a motion to return the case to the prosecutor's office for further investigation, as there had been shortcomings at the pre-trial stage. According to the defence counsel, one of the accused was illiterate, and had signed the investigation protocols under duress without understanding their content. Notwithstanding this serious allegation, the judge rejected the motion, stating that the case had once before been returned to the prosecutor's office for further investigation due to other shortcomings of the pre-trial investigation, and that the motion therefore could not be considered at the preparatory hearing, but should instead be lodged during the next hearings on merits.

In fact, the CPC does not establish any limitations to returning the criminal case for further pre-trial investigation, if necessary in order to hold a fair trial. Articles 301 and 301.3 of the CPC envisage that the hearing on the merits shall be set during the preparatory hearing, provided that no serious violations occurred during the pre-trial investigation. Article 303.3 of the CPC specifies what may constitute "serious violations", including *inter alia,* the breach of the accused's right to defence and of his/her right to use a language he/she knows.

The Project Team also notes positive cases, when presiding judges, having provided the accused with indictments and other investigation materials, postponed the hearings, so that the accused and defence counsel could prepare for the hearings.

Commendable examples:

- In the case against Fatali Bayimov, charged under Article 132 of the Criminal Code – battery, at Khatai District Court on 29 July 2009, during the hearing, the judge inquired about complaints regarding to the pre-trial investigation. The accused stated that, although he had reconciled with the victim, the investigator did not terminate the criminal case. In response to this statement, the presiding

judge postponed the hearing, having invited the investigator for questioning. On 31 July 2009, following questioning of the investigator and of the victim, the presiding judge ruled to terminate the criminal case.

- In the case against Hasrat Yusifov, Giyas Mammadov, Yengibar Yusifov, Sakhavat Zayidov and Firuz Baloglanov, charged under Articles 177.2.2, 177.2.3 and 177.2.4 of the Criminal Code – repeated gross theft committed during unlawful entry, at the Sumgayit City Court on 02 July 2009, one of the accused alleged that he had not received the indictment. The judge provided him with the indictment and postponed the hearing to provide him with more time to become acquainted with the relevant document.

- In the case against Fizuli Nasibov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Narimanov District Court on 06 July 2009, as soon as the hearing started, the accused alleged that he had not received the indictment. The presiding judge provided the accused with the indictment and postponed the hearing.

- In the case against Samir Rasulov, charged under Articles 177.2.1 and 177.2.2 of the Criminal Code – repeated theft by a group of persons, at Nizami District Court on 20 July 2009, following the accused's statement that he had not received the indictment, the presiding judge provided him with the indictment, and postponed the hearing to give him more time to become familiar with the document.

- In the case against E. Shiraliyev and S. Shiraliyeva, charged under Article 132 of the Criminal Code – battery, at Binagadi District Court on 22 July 2009, the judge postponed the preparatory hearing because the accused had not been provided with the indictment.

- In the case against Ruslan Sariyev, charged under Article 221.1 of the Criminal Code – hooliganism, at Binagadi District Court on 29 July 2009, the judge postponed the hearing, because he discovered that the accused had not been provided with the indictment.

- In the case against Gunduz Mammadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Sabunchu District Court on 03 August 2009, the judge postponed the preparatory hearing, as he had discovered that the accused had not received the indictment and court summons.

- In the case against Turkan Baghirova and Rahila Ismayilova, charged under Article 221.2.1 of the Criminal Code – hooliganism, at Khatai District Court on 04 August 2009, at the preparatory hearing, the accused alleged that they had not yet received the indictment. The judge provided them with the indictment and postponed the preparatory hearing to provide them with more time to become familiar

with it. The same occurred in the case against Parvin Hamidov and Huseynaga Asgarov, charged under Article 181.2.3 of the Criminal Code – burglary, at the Court of Grave Crimes on 22 July 2009.

4. Duty to Effectively Investigate Allegations of Ill-Treatment

Article 3 of the ECHR states that:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

This article regulates one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the ECHR and of Protocols Nos. 1 and 4 thereto, Article 3 of the ECHR makes no provision for exceptions and no derogation from it is permissible under Article 15 (2) of the ECHR, even in the event of a public emergency threatening the life of the nation.[41]

Article 46 (III) of the Constitution states that no one shall be subjected to torture or ill-treatment. Furthermore, in accordance with Article 113 of the Criminal Code, torture of an individual who is in detention or otherwise deprived of his or her liberty, is a crime punishable by imprisonment for a term of seven to ten years. In addition, according to Article 133 of the Criminal Code, infliction of physical or psychological suffering to an individual by way of systematic beating or other violent actions performed by a public official in his official capacity is a crime punishable by imprisonment for a term of five to ten years.

According to Article 15 of the UNCAT,[42] statements made under torture are not allowed as evidence under any circumstance against the person who was tortured. However, such statement may be used against a person accused of torture, as evidence that the statement was made under torture. Likewise, information obtained through the use of violence, threats, deceit, torture or other cruel, inhuman or degrading acts shall not under any circumstance be accepted as evidence according to Article 125.2.2 of the CPC.

It is the obligation of State authorities to act when confronted with allegations of torture or mistreatment, and there is a particular responsibility for a judge to follow up on allegations of torture if such an allegation is argued by the accused during a hearing. The ECtHR has held that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the cause of the injury, failing which a clear issue arises under Article 3 of the

[41] See *Selmouni v. France*, ECtHR Judgment of 28 July 1999, para 95.
[42] Following Azerbaijan's ratification of the Optional Protocol to the UNCAT in December 2009, the Office of the National Human Rights Commissioner (Ombudsman) was designated as the National Preventive Mechanism in the Country.

ECHR.[43] The Ministry of Internal Affairs of the Republic of Azerbaijan issued an instruction on 21 of April 2006 reminding law enforcement officials under the jurisdiction of the Ministry of Internal Affairs that it is unacceptable to obtain evidence through inhuman or degrading treatment.[44]

The Project Team indicated that there were rare cases when judges took appropriate measures to investigate allegations of coercion. In most cases, judges treated such allegations in a dismissive and inattentive manner. In many cases judges provided different, including contradictory comments towards investigation of mistreatment allegations, even putting the burden of proof on the accused.

The Project Team reported the following cases where the judges did not investigate allegations of torture or ill-treatment made by the accused during the hearings:

- In the case against Nariman Rustamov and Siraj Safarov, charged under Article 221.1 of the Criminal Code – hooliganism, at the Sumgayit City Court on 19 March 2009, the accused alleged that they were ill-treated and beaten, but the presiding judge did not investigate the issue.

- In the case against Fizuli Maharramov, charged under Article 294.1 of the Criminal Code – fraud of evidences, at the Sumgayit City Court on 30 March 2009, the accused's statement that he had been beaten while in police custody was ignored by the presiding judge.

- In the case of Ruslan Mammadov, charged under Article 120.1 of the Criminal Code – deliberate murder, at the Court of Grave Crimes on 10 April 2009, the defence counsel raised a motion regarding the ill-treatment of the accused during the pre-trial investigation. Nevertheless, the presiding judge found this allegation groundless and rejected the motion without further investigation.

- In the case against Nizami Balayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgait City Court on 22 April 2009, the accused reported that he had been ill-treated during the preliminary investigation by police officers who had forced him to admit his guilt in writing. Nevertheless, the presiding judge did not look further into the allegations.

- In the case against Parvar Hasanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Binagadi District Court on 21 Arpil 2009, the accused alleged that he had been beaten when interrogated at the police station by police officers. In response to these allegations, the presiding judge asked the accused why he had not raised any complaints on that issue during the pre-trial stage. The accused answered that he had been waiting for the trial hearing to raise all issues. The

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[43] See *Aksoy v. Turkey*, ECtHR Judgment of 18 December 1996, para 61. See *Mammadov (Jalaloglu) v. Azerbaijan*, ECtHR Judgment of 11 January 2007, para 60.

[44] See also Report submitted 10 December 2007 (paragraph 127) by Azerbaijan under Article 40 of the ICCPR.

judge and the prosecutor told him that he had to raise that issue at the pre-trial stage and not at that hearing.

- In the case against Azer Khanmammadov, charged under Article 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Sabunchu District Court on 12 May 2009, the witness alleged that he had been ill-treated at the pre-trial investigation stage, and had signed the testimony under duress. He noted that the testimonial was drafted in Latin alphabet which he did not know and could not read. He also showed the injury on his face which allegedly was caused during the pre-trial investigation. Following this statement, the defence counsel submitted a motion to terminate the criminal case since all testimonies and evidences had been collected illegally. The judge nevertheless rejected the motion, having simply noted that the indictment was supported by sufficient and reliable evidence.

- In the case against Zohrab Alasgarov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, at Narimanov District Court on 11 June 2009, the accused alleged that he was ill-treated during the pre-trial investigation period. In particular, he claimed that he was beaten at the police station, and tried to commit suicide. Nevertheless, the presiding judge did not investigate these allegations.

- In the case against Rasim Guliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Sabunchu District Court on 23 September and 07 October 2009, the accused revoked his guilty plea, arguing that the investigator (precisely mentioning the name) forced him to plead guilty during the pre-trial investigation. Moreover, the accused stated that during the pre-trial investigation the expert who prepared a forensic opinion on the accused's drug addiction status, demanded money from him to issue an opinion in his favour. Both allegations were not, however, further investigated by the judge.

Contradictory and inappropriate comments by judges:

- In the case against Javidan Ibishov and Rafail Majidov, charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Yasamal District Court on 02 June 2009, one of the accused alleged that they had been ill-treated during the preliminary investigation stage. The presiding judge did not react to this allegation, arguing that such complaints should be filed during the preparatory hearing.

- In the case against Mehman Mammadov and Rahman Mammadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Nizami District Court on 05 August 2009, in response to the accused's statement on mistreatment during the pre-trial investigation, the presiding judge

suggested that the accused should provide evidence of such mistreatment, which, as indicated above, is in contradiction with the burden of proof regarding ill-treatment.[45]

- In the case against Namig Babayev and Azamat Khayalov, charged under Articles 177.1, 177.2.2 and 177.2.4 of the Criminal Code – repeated gross theft, at Sabunchu District Court on 16 September 2009, the judge asked the accused whether he confirmed his written testimonies given during the pre-trial stage. When the accused revoked them, on the grounds that he was forced to sign "*a blank paper*", the judge, without investigating the accused's allegation, suggested that "*you have to read any document you sign*" and continued the hearing.

- In the case against Novruz Nurullayev, Aziz Nurullayev and Shahin Aliyev, charged under Article 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, held at the Court of Grave Crimes on 26 May 2009, the accused alleged that they had been ill-treated and subjected to torture during the pre-trial investigation and that, as a result, they had testified under duress. The presiding judge did not react to these allegations, commenting that a complaint of mistreatment should be filed during the pre-trial stage only. Moreover, when defence counsel submitted a motion to invite the investigator involved in this case during the pre-trial investigation, the presiding judge dismissed the motion without any reasoning.

- In the case against Zohrab Kalfaliyev and Lyudmila Polozkova, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Sabunchu District Court on 09 September 2009, the defence counsel filed a motion requesting forensic examination of the accused, alleging that they had both been subjected to ill-treatment at the Sabunchu District Police Station by police officers during the pre-trial investigation in March 2009. The judge, after deliberating, dismissed the motion, on the grounds that it was too late to proceed with the requested forensic examination since the allegations referred to March 2009. Notwithstanding that both accused revoked their guilty plea, stating that they had been forced to plead guilty during the pre-trial investigation, the judge failed to further investigate these allegations.

Commendable cases where the judge considered the torture or ill-treatment allegations:

- In the case against Igbal Abiyev, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Sabail District Court on 03 April 2009, the accused alleged that he had been ill-treated during the pre-trial detention period and that he had testified under duress. The presiding judge decided to investigate these allegations and sent inquiries to the relevant State bodies.

[45] See *Aksoy v. Turkey*, ECtHR Judgment of 18 December 1996, para 61.

- In the case against Bahruz Hasanov, charged under Articles 180.2.2 and 180.2.4 of the Criminal Code – repeated robbery at the Court of Grave Crimes on 22 July 2009, the accused alleged at the preparatory hearing that during the pre-trial investigation he had been subjected to ill-treatment and had been forced to plead guilty. The presiding judge agreed to investigate this issue during the hearing on the merits.

5. The Right to an Independent and Impartial Tribunal

The right to an independent and impartial tribunal established by law is considered by the ECtHR to be: "*by far the most important guarantee regulated by Article 6 of the ECHR*, *laying the foundations for the rule of law*".[46] The right to trial by an independent and impartial tribunal is also envisaged in Article 10 of the UDHR and further elaborated in the Basic Principles on the Independence of the Judiciary,[47] as well as in Article 14 of the ICCPR. In the determination of any criminal charge against him, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.[48]

Article 6 (1) of the ECHR guarantees that:

> *"[E]veryone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

All tribunals, courts and judges must be independent from the executive and legislative branches of government,[49] as well as from parties to the proceedings.[50] The independence of the courts and judicial officers must be guaranteed by the Constitution, laws and policies of the country and respected in practice by the government, its agencies and authorities, as well by the legislature.

Full independence requires an effective separation of powers by which the judiciary is protected from undue influence by or interference from the executive branch. In assessing the *independence* of a tribunal, the ECtHR looks into:

- the manner of appointment of its members;
- the duration of their term of office (security of tenure);
- the existence of guarantees against outside pressure; and
- the question whether the body presents an appearance of independence.[51]

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[46] Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, p. 47.
[47] As adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 26 August to 6 September 1985 and endorsed by UN General Assembly Resoluctions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
[48] OSCE Commitments, Right to a fair trial, Copenhagen Document (1990), para 5.16.
[49] See *Stran Greek Refineries and Stratis Andreadis v. Greece*, ECtHR Judgment of 9 December 1994, para. 49.
[50] See *Ringeisen v. Austria*, ECtHR Judgment of 16 July 1971, para. 95.
[51] See *Campbell and Fell v. UK*, ECtHR Judgment of 28 June 1984, para 78.

As stated above, the tribunal must not only be independent from the executive branch, but also of the parties in the case. While the independence of a tribunal rests on mechanisms aimed at ensuring a court's position externally, impartiality refers to the judges' conduct and its bearing on the final outcome of a specific case as well. The concept of *impartiality* is understood by the ECtHR to denote the "*absence of prejudice or bias. […] A distinction can be drawn in this context between a subjective approach, that is endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether he offered guarantees sufficient to exclude any legitimate doubt in this respect*".[52]

The ECtHR requires proof of actual bias with regard to subjective impartiality, and personal impartiality of a duly appointed judge is presumed until there is evidence to the contrary.[53] As to the objective test, the ECtHR has stated in the case of *Fey v. Austria* that

"*Under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, as far as criminal proceedings are concerned, in the accused. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is determined is whether this fear can be held to be objectively justified.*"[54]

Bias is the overriding criterion for ascertaining a court's impartiality. Impartiality might, thus, be *prima facie* called into question when a judge has taken part in the same proceedings in a prior capacity, such as, for example, as prosecutor or lawyer.

The requirements of independence and impartiality are inter-related and sometimes difficult to dissociate[55] and the ECtHR often considers them together.

In Azerbaijan, the right to an independent and impartial tribunal is provided for in Article 127 of the Constitution and Article 28 of the CPC.

The Trial Monitoring Programme has looked at the procedural issues related to the right to an independent and impartial tribunal; hence the issues related to the institutional framework of the judiciary are not included. The findings are based on the observations of the Trial Monitoring Team on the appearance of independence and impartiality of judges in the monitored cases.

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[52] See *Piersack v. Belgium*, ECtHR Judgment of 1 October 1982, para 30.
[53] See *Hauschildt v. Denmark*, Judgement of 24 May 1984, para 47.
[54] See *Fey v. Austria*, ECtHR Judgment of 24 February 1993, para 30.
[55] See *Langborger v. Sweden*, ECtHR Judgment of 22 June 1989, para 32.

The Trial Monitoring Programme has identified the following main problematic trends regarding the right to an independent and impartial tribunal: the presence of the prosecutor during judicial deliberations, as well as use of judges' offices for deliberations instead of a special deliberation room.

The behaviour of judges may put into question the impartiality of the tribunal. For example:

- Lack of any reaction to the prosecutor's improper behaviour in court towards the parties;
- Judges not following attentively the case or even leaving the courtroom during the case examination;
- Manifesting prosecutorial bias while questioning the accused; and
- Failure to inquire at the preliminary hearing about irregularities that occurred at the pre-trial stage.

In the following cases, the Project Team reported that the prosecutor was present during the judge's deliberation, which is contrary to the law and gives the impression that the judge is not taking the decision on his/her own. In particular, the following cases were reported:

- Case against Sabir Aydamirov, charged under Articles 263.1 and 264 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, and escaping from the scene of a traffic accident, at Yasamal District Court on 19 March 2009;

- Case against Hajigulu Salimov, charged under Article 221.1 of the Criminal Code – hooliganism, at Yasamal District Court on 31 March 2009;

- Case against Zafar Shafiyev, charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 13 April 2009; and

- Case against Azer Guliyev and Mansur Asadullayev, both charged under Articles 127.1 and 132 of the Criminal Code – deliberate causing of less serious injuries and battery, at Binagadi District Court on 13 April 2009.

The Project Team has noted that judges often used their own offices for deliberations rather than the courts' special deliberation rooms. Such irregularities might be justified due to a lack of appropriate facilities within the court premises – for example, in some court buildings there is only one deliberation room available.

The Project Team was also concerned with a number of hearings where the behaviour of judges may put into question the impartiality of the tribunal, for example due to the lack of any reaction to the prosecutor's improper behaviour in court towards the parties. For instance, in the case against Zafar Shafiyev, charged

under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 13 April 2009, the presiding judge did not react when the prosecutor repeatedly addressed the accused in a rude manner while questioning him. Likewise, during the hearing in the case against Kazim Naghiyev, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, at Sabail District Court on 20 April 2009, the prosecutor's behaviour towards the accused was rude. Nevertheless, the judge did not intervene. This, however, could also be an indication of the judge's ineffectiveness in controlling the courtroom, rather than indicating *per se* a biased attitude of the judge towards the trial participants.

In the case against Mubariz Bayramov and Farahim Imanov, both charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at the Sumgayit City Court on 15 April 2009, the prosecutor was "*presiding*" the hearing. He repeatedly interrupted the indicted persons and the witnesses. However, the judge did not pay attention to nor remedied the situation. Moreover, when the witness entered the courtroom, one of the accused’s relatives made comments about him, and the judge shouted at the relative and ordered him to leave the courtroom in a rather offensive way. The judge further stated that the relative pressured the witness and ordered the witness to file a complaint against the relative. When the witness objected saying that there was no pressure against him, the prosecutor pointed to the metallic cell in the courtroom stating that the witness would be placed there if he failed to obey. Above all, when the judge declared he would begin the deliberations, all participants were ordered to leave the courtroom which was to be used as deliberation room. Next to the judge, his clerk and the prosecutor remained in the room.

In the hearing on the case against Fargana Taghiyeva and Toghrul Taghiyev, charged under Articles 128 and 132 of the Criminal Code – deliberate causing of minor injuries and battery, at Binagadi District Court on 22 April 2009, the accused alleged that the investigator had asked him to settle the case and terminate criminal proceedings by paying 2000 AZN during the preliminary investigation. However, the presiding judge did not investigate this serious allegation.

In some cases, there appeared a clear prosecutorial bias during the questioning of the accused. For example, in the case against Gultakin Mustafayeva, charged under Article 132 of the Criminal Code – battery, at Binagadi District Court on 07 July 2009, the judge pressured the accused as follows:

Judge: *“The victim could not have fallen down and get injured if you had hit her with your hand, she is heavier than you”.*
Accused: *“I hit her with my hand. I did not push her”.*
Judge: *“It is impossible to fall down like that. You pushed her and she fell down.”*

A concern was raised in relation to a number of cases at the stage of the preparatory hearing, when presiding judges neither inquired, nor investigated cases of alleged irregularities, which might have occurred at the pre-

trial stage. Under Article 299.3.2 of the CPC, the presiding judge shall inquire about and review any case of violation or irregularities during the pre-trial investigation.

6. The Right to be Presumed Innocent

Article 6 (2) of the ECHR states that:

> *"[E]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law."*

This rule is reiterated under the OSCE commitments, according to which everyone will be presumed innocent until proved guilty according to law.[56] Presumption of innocence requires that, "*when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused*".[57] Consequently, the judge and other public authorities[58] should have an impartial attitude towards the defendant and refrain from doing or saying anything which would imply that the defendant is guilty.

In addition to the ECHR, the presumption of innocence is regulated by Article 11 of the UDHR and Article 14 of the ICCPR.

"*No attributes of guilt [should be] borne by the accused during the trial which might impact on the presumption of their innocence. Such attributes could include holding the accused in a cell within the courtroom, requiring the accused to wear handcuffs, shackles or prison uniform in the courtroom, or taking the accused to trial with a shaven head in countries where convicted prisoners have their heads shaved. In an attempt to avoid such prejudicial indications, according to the European Prison Rules, if an accused has no suitable clothing of his or her own, he or she should be provided with civilian clothing in good condition in which to appear in court*". [59]

Moreover, according to the ECtHR, "*harsh and hostile appearance of judicial proceedings could lead to an average observer to believe that 'extremely dangerous criminals' were on trial. Apart from undermining the*

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[56] OSCE Commitments, Right to a fair trial, Copenhagen Document (1990), para 5.19.

[57] See *Barbera, Messegue and Joabardo v. Spain*, ECtHR Judgment of 6 December 1988, para 77.

[58] See *Allenet de Ribemont v. France,* ECtHR Judgment of 10 February 1995, paras 36 and 37, where the ECtHR found that the remarks of two senior police officers, made at a press conference held in parallel with the judicial investigation and supported by the Ministry of Interior, violated the right to be presumed innocent as they were "clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority".

[59] Rule 95(3) of the European Prison Rules, adopted by the Committee of Ministers of the Council of Europe, 12 February 1987; see also Rule 17(3) of the Standard Minimum Rules for the Treatment of Prisoners, UN Economic and Social Council resolution 663 C (XXIV), 31 July 1957.

principle of the presumption of innocence, the disputed treatment in the court room humiliated the applicants in their own eyes, if not those of the public."[60]

The presumption of innocence: 1) places the burden of proof on the prosecution; 2) guarantees that guilt cannot be presumed unless the charge has been proven beyond reasonable doubt; 3) ensures that the accused has the benefit of the doubt; and 4) requires persons accused of an offence to be treated in accordance with this principle. Public authorities and officials must respect the presumption of innocence. All public authorities have a duty to refrain from prejudging the outcome of a trial e.g. by making public statements affirming the guilt of the accused.[61]

The presumption of innocence is closely linked to the right of the accused not to incriminate himself or herself.[62] This right includes a variety of legal presumptions,[63] such as the drawing of inferences from one's silence,[64] the comments made at the issuing of the decision,[65] upholding the presumption of innocence after the acquittal has become final[66] and other aspects that the Trial Monitoring Programme could not assess due to its limited scope. Therefore, the observations and conclusions in the present report regarding respect for the presumption of innocence are focused on the judges' and other trial participants' attitudes towards the accused. In this respect, the observations are linked to the right to an independent and impartial tribunal, as impartiality of the judge is a central element in the protection of the presumption of innocence.[67] In Azerbaijani national law this right is reflected in Article 63 of the Constitution and Article 21 of the CPC.

The Trial Monitoring Programme concluded that the presumption of innocence was infringed most often through the use of inappropriate facilities. More specifically, the practice of holding the accused in handcuffs and in metal cages in the courtroom, even in cases where no serious security concerns seemed to have mandated such condition raised concerns regarding the presumption of innocence. In addition, the attitudes of judges towards the accused, including making comments that directly indicated the judges' opinion on the guilt of the accused, even before considering the evidence in the case, raised the Project Team's concerns.

In particular, the Project Team has noted that in most cases the accused was held in handcuffs and in a metal cage, although these restrictive measures did not seem justified on security grounds. For instance, concerns were raised in relation to the case against Azer Mammadov, charged under Article 234.1 of the Criminal Code

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[60] See *Ramishvili and Kokhreidze v. Georgia*, ECtHR Judgment of 27 January 2009, para 100. See also *Sarban v. Moldova,* ECtHR Judgment of 4 October 2005, para 90.
[61] See "Trial Observation Manual for Criminal Proceedings", Practitioners Guide No. 5, International Commission of Jurists.
[62] See *Heaney & McGuiness v. Ireland,* ECtHR Judgment of 21 December 2000, para 40.
[63] See *Salabiaku v. France,* ECtHR Judgment of 7 October 1998, para 28.
[64] See *Tefner v. Austria,* ECtHR Judgment of 20 March 2001, paras 15-17.
[65] See *Minelli v. Switzerland*, ECtHR Judgment of 21 February 1983, paras 31-33.
[66] See *Sekanina v. Austria,* ECtHR Judgment of 25 August 1993, para 30.
[67] Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, p. 174.

– illegal possession of drugs, at the Shirvan City Court on 07 and 09 April 2009. Having been placed into the metal cage, the accused remained handcuffed during the whole hearing. The same was observed in the case against Vugar Rasulov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgayit City Court on 08 and 13 April 2009, and the case against Vugar Bekimatov, charged under Article 221.3 of the Criminal Code – hooliganism, at the Shirvan City Court on 15 and 20 April 2009.

Unless there are duly justified security concerns in view of the charges at stake and the accused's criminal record, handcuffing and indiscriminately confining the accused to a metal cage raises concerns regarding the presumption of innocence of the accused and the right to an independent and impartial tribunal.

The Project Team also monitored the case against Elchin Valiyev, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at the Sabunchu District Court on 07 April 2009, where the judge demonstrated a preconceived idea that the accused had committed the crime before considering all the evidence. At the preparatory hearing, the judge, without explaining to the accused that he was not bound by any plea of guilt or innocense made during the pre-trial investigation proceedings, asked the accused about the price of the drugs he had sold.

Another example was the case against Imran Shikhov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Sabail District Court on 07 May 2009. When the accused refused to testify, the presiding judge demanded that he should testify about the acts he had committed, saying "*Shikhov, you have been in that cage four times, testify and do not make problems*".

In the case against Namig Babayev and Azamat Khayalov, charged under Articles 177.1, 177.2.2 and 177.2.4 of the Criminal Code – theft committed repeatedly causing significant damage, at Sabunchu District Court on 16 September 2009, the judge asked one of the accused if he pleaded guilty. The accused answered that he partially pleaded guilty. When the defence counsel requested for the accused to indicate to which part of the indictment he pleaded guilty, the judge intervened stating that: "*How can the accused answer this question, when he has committed this crime so many times that he definitely does not remember which crimes he did not commit*." Further, the judge continued the hearing without giving the accused a chance to answer the defence counsel's question. Of note, the accused did not have any criminal record before this court case.

During the hearing in the case of Emin Abdullayev and Adnan Hajizade, charged under Articles 127.2.3 and 221.2.1 of the Criminal Code – deliberate causing of less serious injuries and hooliganism committed by a group of persons, at Sabail District Court on 06 November 2009, the defence counsel raised a motion to interrogate the investigator who had carried out the preliminary investigation. He noted that the photos taken during the investigation had been given by the investigator to the media for publishing, an act that could clearly violate the presumption of innocence. The prosecutor objected to the motion. He stated that an

investigator can only be interrogated in a court hearing if the court finds some shortcomings in his activities or if he has abused his position. The judge dismissed the motion without any reasoning.

7. Equality of Arms

The principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes the fundamental right that criminal proceedings should be adversarial.[68] The equality of arms principle requires that each party to the proceedings has a reasonable opportunity to present his/her case to the court under conditions which do not place him/her at a substantial disadvantage compared to the opponent, so that a fair balance is struck between the parties.[69] The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given equal opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may ensure that this requirement is met. However, whatever method is chosen, it should ensure that each party is aware of observations that have been filed and that each party will have an authentic opportunity to comment thereon.[70]

The principle of equality of arms means that: 1) both parties should have adequate time and facilities to prepare the case and a genuine opportunity to present arguments and evidence and to challenge or respond to opposing arguments or evidence; 2) both parties are entitled to consult and be represented by a legal representative or other qualified persons chosen by them at all stages of the proceedings; 3) if either of the parties cannot understand or speak the language used by the judicial body, then they should be assisted by an interpreter; 4) both parties are entitled to have their rights and obligations affected only by decisions based solely on evidence presented to the court; and 5) both parties should have the right to appeal decisions taken by the trial court before a higher judicial body.[71]

It is an inherent part of a "fair hearing" that the defendant should be given an opportunity to comment on evidence obtained in regard to disputed facts even if the facts relate to a point of procedure rather than the alleged offence as such.[72] “*The prosecution authorities shall disclose to the defence all material evidence in their possession for or against the accused*.”[73]

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[68] See *Brandstetter v. Austria*, ECtHR Judgment of 28 August 1991, para 66.
[69] See *De Haes and Gijsels v. Belgium*, ECtHR Judgment of 24 February 1997, para 53.
[70] See *Brandstetter v. Austria*, ECtHR Judgment of 28 August 1991, para 67. See also *Ruiz-Mateos v. Spain*, ECtHR Judgment of 23 June 1993, para 63.
[71] See "Trial Observation Manual for Criminal Proceedings", Practitioners Guide No. 5, International Commission of Jurists.
[72] See *Kamasinski v. Austria*, ECtHR Judgment of 19 December 1989, para 102.
[73] See *Edwards v. the United Kingdom,* ECtHR Judgment of 16 December 1992, para 36.

However, the ECtHR stated in the case of *Rowe and Davis v. the United Kingdom* that:

"*The entitlement to disclosure of relevant evidence is not an absolute right. Sometimes, in criminal proceedings, there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused. In such cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, such restricting measures have to be absolutely necessary, otherwise they will constitute a breach of Article 6 (1) of the ECHR. [...] Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities. [...] The prosecution's failure to lay the evidence in question (in the respective case) before the trial judge and to permit him to rule on the question of disclosure deprived the applicants of a fair trial.*"[74]

The ECtHR found a violation of the equality of arms principle in the case when a defendant, who wished to represent himself, was denied access by the prosecutor to the case file and not permitted copies of the documents contained in it, which the defendant needed in order to voice his defence and challenge the official report.[75]

In Azerbaijan, the principle of equality of arms is provided for in Articles 127 (II) and 127 (VII) of the Constitution, and Articles 7.0.19, 11 and 32 of the CPC.

The Trial Monitoring Programme is mostly concerned with procedural issues and issues of appearances. The Project Team noted the following types of concerns regarding the observation of the principle of equality of arms during a number of hearings:

- In the case against Alishan Ahmadov, charged under Article 177.1 of the Criminal Code – theft, at the Shaki City Court on 06 April 2009, the presiding judge did not clarify whether the accused had received the indictment or not, in accordance with Article 6 (3) a of the ECHR and Article 91.5 of the CPC. Likewise, in the case against Mursal Rasulov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Shaki City Court on 07 April 2009, the presiding judge did not verify whether the accused was provided with the indictment against him. In addition, during the hearing, the judge asked only the prosecutor if he had any motions, questions or objections without giving any consideration to the defendant.

[74] See *Rowe and Davis v. the United Kingdom*, ECtHR Judgment of 16 February 2000, paras 65-66.
[75] See *Foucher v. France,* ECtHR Judgment of 17 March 1997, para 36.

- In the case against Firdovsi Asgarov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Yasamal District Court on 29 March 2009, the accused repeatedly reported that he had not been provided with a copy of the indictment and was not aware of the nature of the charges brought against him. Reportedly, during the pre-trial stage, the accused was not allowed to read the documents and according to him, he was forced to sign the documents. This allegation was dismissed by the judge on the basis of the prosecutor's objection without any further investigation.

- In the case against Alzamin Karimov, charged under Article 306.1 of the Criminal Code – non-compliance with a final judgment or court decision, at Sabunchu District Court on 05 August 2009, the judge asked only the prosecutor if there had been any shortcomings during the pre-trial investigation or if there were any grounds to terminate the criminal proceedings, and failed to give the opportunity to the accused to respond to this question.

- In the case against Ziya Gulamali, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, at the Sumgayit City Court on 28 September 2009, the judge did not consider the forensic examination results at the court hearing, nor did he provide the accused with these results. The judge only mentioned that the case materials included a forensic expert's opinion.

A few commendable cases:

- In the case against Shakir Amirov and Nizami Azizov, both charged under Articles 178.2.3 and 320.1 of the Criminal Code – fraud by abuse of official authority and forgery of official documents for the purpose of using or selling, at the Court of Grave Crimes on 12 May 2009, during the preparatory hearing the defence counsel complained about the investigation authorities. He alleged that they had not allowed him to meet with the accused and had not provided him with an indictment, nor with other relevant materials. Having ordered the prosecution to provide the accused with the indictment and all relevant materials, the presiding judge allowed the defence counsel sufficient time to study the materials. Further, the judge asked the penitentiary administration whether the accused had indeed been allowed to meet with his lawyer.

- The Project Team noted a case when the presiding judge terminated the criminal case based on insufficient evidence provided by the prosecutor. In the case against Elnur Guliyev, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Binagadi District Court on 23 July 2009, the judge acquitted the accused as the evidence submitted by the accusation was not sufficient. Accordingly, the accused was released from arrest in the courtroom.

8. The Right to Examine Witnesses

Article 6 (3) d of the ECHR states that everyone charged with a criminal offence has the right:

> *[T]o examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.*

The right provided in Article 6 (3) d is usually examined by the ECtHR under the general rule of Article 6 (1) as "*the guarantees contained in paragraph 3 are constituent elements, amongst others, of the concept of a fair trial set forth in paragraph 1*".[76] The guarantee of examining witnesses ensures the adversarial character of the proceedings, provides the defence a fair chance to challenge evidence against the accused, and bring its own evidence, thereby serving the general principle of equality of arms, which in total ensures that the accused is an active participant in the trial.[77]

This right not only entails equal treatment of the prosecution and the defence in this matter, but also means that the hearing of witnesses must in general be adversarial, requiring that all the evidence in principle be produced in the presence of the accused at an impartial public hearing with a view to adversarial argument.[78] This does not mean, however, that a statement of a witness must always be made in court and in public in order to be admitted in evidence, as this may prove impossible in certain cases. The use as evidence of statements obtained at the pre-trial stage is not in itself inconsistent with Articles 6 (1) and 6 (3) d of the ECHR, provided that the rights of the defence have been respected.

As a rule, these rights require that the judge give the defendant an adequate and proper opportunity to challenge and question a witness against him, either when the witness is making his statement or at a later stage of the proceedings.[79] The ECtHR found that domestic provisions exempting some types of witnesses, e.g. family members, from the obligation to give evidence are not incompatible with the ECHR in view of the moral dilemma that may arise having family members testifying as witnesses against their relatives in criminal cases. Furthermore, there are comparable provisions in the domestic law of several Member States of the Council of Europe.[80]

In Azerbaijan, under Article 328.1 of the CPC, witnesses shall be questioned separately without the presence of other witnesses at the hearing. This article also implies that the judge or court administration should ensure that witnesses shall not communicate with each other. This provision addresses the very specific issue of

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[76] See *Bonisch v. Austria,* ECtHR Judgment of 6 May 1985, para 29. In its earlier jurisprudence, the ECtHR looked at this specific right in isolation – see also Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, p. 292.

[77] Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, p. 293.

[78] See *Barbera, Messegue and Joabardo v. Spain*, ECtHR Judgment of 6 December 1988, para 78.

[79] See *Asch v. Austria,* ECtHR Judgment of 26 April 1991, para 27.

[80] See *Unterpertinger v Austria*, ECtHR Judgment of 24 November 1986, para 30.

contamination of witnesses. Article 328.5 of the CPC envisages that the presiding judge, following the witness's oath, shall question the witness about his/her relationship with other participants in the trial. This requirement constitutes a precondition to assess the impartiality of the witnesses' testimony. It also ensures that no family member or other person exempted from the duty to testify is *de facto* required to testify due to lack of knowledge of his/her rights.

The Project Team indicated that most visited court premises, except the Court of Grave Crimes, do not have facilities to adequately accommodate witnesses. This could lead to irregularities, such as witnesses communicating with each other, e.g., influencing each other's testimony, before being questioned at the hearing. The Project Team also noted several cases when the rules on hearing the witnesses were infringed, e.g. by allowing the witnesses to be present in the courtroom and thus following the proceedings and other witnesses' statements before giving their statements or before providing evidence. The Project Team has also noted several instances when the judge dismissed without deliberation or reasoning the defence's request to examine a witness, or a complaint about missing evidence from the case file.

The Project Team observed a number of cases where the presiding judge did not clarify the relationship between witnesses and other participants of the trial and/or the victim and the accused, before questioning, as required by law.[81] In some cases, close relatives or members of the family of the accused testified without having been appropriately informed in advance about their right not to testify against the accused. Some judges did not ask for any identification documents from the witnesses before receiving their testimony, as required by law.[82] There were also several cases in which the judge did not explain to the witnesses their rights and duties, or warn them about criminal liability for false statements.

Examples of cases where the witnesses were present in the court room before their court testimony actually started:

- Case against Kazim Naghiyev, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, at Sabail District Court on 20 April 2009;

- Case against Nariman Rustamov and Siraj Safarov, charged under Artcile 221.1 of the Criminal Code – hooliganism, at the Sumgayit City Court on 31 March 2009;

- Case against Zavur Pirmuradov, charged under Article 120.2.2 of the Criminal Code – deliberate murder committed for hooliganism purposes, at the Court of Grave Crimes on 01 April 2009; and

[81] Article 328.5 of the CPC.
[82] Article 328.3 of the CPC.

- Case against Hijran Aydinli, charged under Articles 178.2.2, 320.1 and 320.2 of the Criminal Code – repeated fraud and forgery of official documents for the purpose of using or selling, at Azizbayov District Court on 01 April 2009.

Case examples where the judge dismissed, without deliberation or reasoning, the defence's request to examine a witness, or complaint about missing evidence from the case file:

- Case against Ilgar Adiyev, charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 14 April 2009. The presiding judge did not allow the accused to bring a witness to the hearing, despite several motions by the accused to this effect.

- Case against Durdana Ahmadova, charged under Article 221.1 of the Criminal Code – hooliganism, at Binagadi District Court on 04 May 2009. The defence counsel raised a motion to invite and question witnesses, but the judge rejected the motion without explanation.

- Case against Huseyn Gadimov, charged under Articles 29, 120 and 228.1 of the Criminal Code – attempted deliberate murder and illegal possession of fire-arms, at the Shaki Court of Appeal on 15 April 2009. The accused submitted a motion to question as witness the investigator who carried out the preliminary investigation. The accused further alleged that some evidence, including testimonies by the victim's family members, received during the pre-trial investigation, was deliberately extracted from the investigation materials. Nevertheless, the presiding judge rejected the motion based on the prosecutor's objection, finding it groundless.

- Case against Abulfaz Imanov, charged under Article 221.2.2 of the Criminal Code – hooliganism, at the Sumgayit City Court on 29 October 2009. The judge asked if the parties had any motions. Though no motions were raised, the accused later requested to question some witnesses. The judge dismissed this request, arguing that the accused had not put his request in a formal motion format. The judge failed to explain this to the accused in a plain and understandable language, as required by the CPC. This violation was aggravated by the fact that the accused was not represented by defence counsel.

- Case against Emin Abdullayev and Adnan Hajizade, charged under Articles 127.2.3 and 221.2.1 of the Criminal Code – deliberate causing of less serious injuries and hooliganism committed by a group of persons, at Sabail Distirct Court on 07 October 2009. While the defence counsel raised a motion to question several witnesses to support the defence case, the judge allowed only one of these witnesses to appear in court, and provided no reasoning. This decision followed the prosecutor's objection to the defence's list of witnesses.

Case example where relatives testified without being informed about their right not to testify:

- In the case against Ziya Gulamali, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, at the Sumgayit City Court on 28 September 2009, the judge did not explain to the witness the right not to give incriminating testimony against close relatives, despite the fact that the witness was the accused's mother.

Case examples where none of the witnesses were asked by the judge for personal identification before they testified:

- In the case against Kamran Novruzov, charged under Article 177.1 of the Criminal Code – theft, at Nasimi District Court on 03 June 2009, the witness was not required to present any identification documentation to the court before he testified at the hearing.

- Case against Taleh Hashimov and Nazim Abdullayev, charged under Articles 177.2.1 and 177.2.3 of the Criminal Code – theft by a group of persons committed during unlawful entry, at Nizami District Court on 12 June 2009.

Case examples where the judge did not explain the rights and duties of witnesses nor warn them about criminal liability for false statements:

- Case against Azer Nisdimov, charged under Article 180.1 of the Criminal Code – robbery, at Sabunchu District Court on 06 July 2009.

- Case against Zaur Hajimammadov, charged under Article 180.2.1 of the Criminal Code – robbery, at the Court of Grave Crimes on 29 July 2009.

- Case against Gultakin Mustafayeva, charged under Article 132 of the Criminal Code – battery, at Binagadi District Court on 07 July 2009.

- Case against Zaur Aliyev and Ilgar Imanov, charged under Article 126.1 of the Criminal Code – deliberately causing serious injuries to health, at the Court of Grave Crimes on 04 August 2009.

- Case against Ramilla Mustafayeva, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgayit City Court on 13 November 2009. All the witnesses signed a notification confirming that the judge had informed them of their rights and duties only after they had testified.

9. The Right to Legal Assistance

Article 6 (3) c of the ECHR states that [e]veryone charged with a criminal offence has the following minimum rights:

> *[…]"to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require"*

These rights apply to all stages of the criminal proceedings, including the criminal investigation phase and the trial hearing. The defendant is therefore entitled to (a) defend him/herself in person, if s/he so chooses; (b) benefit from legal assistance of his/her own choosing; or (c) be given legal assistance for free when s/he does not have sufficient means to pay for legal assistance and the interests of justice so require.

The State is under an obligation to ensure that counsel appointed to represent the accused provides effective and not just formal representation. However, the right of the accused to choose the lawyer is not absolute. The State can appoint a lawyer against the wishes of the defendant if such an appointment is well justified in the interests of justice.[83] Restrictions on who can appear before courts are acceptable, for example specialised lawyers requested for Supreme Courts[84] or the requirement for appointment of a professional lawyer instead of lay persons in order to provide a more adequate defence.[85]

The accused's right to effective legal representation implies having adequate time and facilities for the preparation of the defence.[86] What constitutes "adequate time" depends on the circumstances of each case, namely the type of proceedings, the nature and seriousness of the alleged offence and the factual circumstances of the case. Factors which may affect what constitutes "adequate time" include the complexity of the case, the accused's access to evidence and to his or her lawyer, as well as time limits determined in national law for the proceedings in question.

If the defendant does not have sufficient means to cover the cost related to his/her legal representation and the interests of justice so require, s/he is entitled to free legal assistance. The following circumstances should be considered when deciding on whether the person is entitled to free legal assistance: the seriousness of the offence and the severity of the potential sentence, or "*what is at stake for the accused*", the complexity of the case and the personal situation of the defendant.[87] Where deprivation of liberty is at stake, the interests of justice in principle call for legal representation.[88]

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[83] See *Crossant v. Germany*, ECtHR Judgment of 25 September 1992, para 34.
[84] See *Meftah and Others v. France*, ECtHR Judgment of 26 July 2002, para 47.
[85] See *Mayzit v.Russia*, ECtHR Judgment of 20 January 2006, para 68.
[86] See Article 14 (3) b of the ICCPR.
[87] See *Quaranta v. Switzerland*, ECtHR Judgment of 24 May 1991, paras 33 – 35.
[88] See also *Behnam v. UK*, ECtHR Judgment of 10 June 1996, para 61.

The legal assistance must be effective since the ECHR is intended to guarantee rights that are practical and effective, not theoretical or illusory.[89] "*[M]ere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may […] shirk his [or her] duties. If they are notified of the situation, the authorities must either replace him [or her] or cause him [or her] to fulfil his [or her] obligations*".[90]

The authorities must take "*positive action*" to ensure that the defendant enjoys an effective defence and they should provide adequate time and facilities for such a defence. The competent national authorities are required under Article 6 (3) c of the ECHR to intervene only if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way.[91]

OSCE commitments echo those of Article 6 (3) of the ECHR:

"*Anyone charged with a criminal offence will have the right to defend himself or herself in person or through legal assistance of his or her own choosing or, if s/he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*"[92] and

"*Any person prosecuted will have the right to defend himself or herself in person or through legal assistance of his or her own choosing or, if s/he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require*."[93]

In Azerbaijan, in addition to the minimum rights prescribed in the ECHR, Article 61 of the Constitution states that every person shall have the right to qualified legal assistance.[94] Moreover, Articles 91.5 and 91.5.5 of the CPC clearly state that a person indicted is entitled to assistance by defence counsel, irrespective of whether s/he has sufficient means to pay for legal assistance. Accordingly, in this respect the CPC goes even beyond the ECHR by not limiting the appointment of a defence lawyer to persons who have no means to hire one or making it dependent on the requirements of the interests of justice.

The national legislation also provides for safeguards to ensure the effectiveness of the legal representation. Article 114.4 of the CPC provides that "*if there is a doubt or other concern about the competence or honesty of the defence counsel or of the person appointed as representative, the defence counsel or representative*

[89] See *Artico v. Italy*, ECtHR Judgment of 30 April 1980, para 33.
[90] See *Artico v. Italy*, ECtHR Judgment of 30 April 1980, para 33.
[91] See *Kamasinski v. Austria*, ECtHR Judgment of 19 December 1989, para 65.
[92] OSCE Commitments, Right to a fair trial, Moscow Meeting 1991, para 23.1 (v).
[93] OSCE Commitments, Right to a fair trial, Copenhagen Document (1990), para 5.17.
[94] The Constitutional Court of the Republic of Azerbaijan has emphasised the full exercise of this right in its Decision On the Conformity of Articles 256 and 259 of the Code of Administrative Delinquencies of the Republic of Azerbaijan with Article 61 of the Constitution of the Republic of Azerbaijan, of 13 July 1999. The Court ruled that Articles 256 and 259 of the Administrative Code, which restricted the right of persons who committed administrative offences to legal assistance, were infringing his/her constitutional rights and were therefore declared null and void.

shall be removed from the criminal proceedings in response to an application by the defendant or the person represented". In light of ECtHR case law, the national court should act also on its own motion to ensure that defence counsel is competent, not only upon the defendant's application to the court.

The monitoring revealed serious violations of the right to legal assistance. Legal assistance is usually provided only when the defendant expressly requests it. The monitors observed several cases where the judge did not explain the right to be represented by defence counsel and often accepted the defendant's insistence on representing himself or herself. Moreover, in several cases, the judge or other trial participants suggested that the defendant had refused to be represented by a lawyer. Although the CPC is very generous in providing the right to be represented by a lawyer to any defendant, irrespective of the financial means, this right seems rather illusory if judges do not explain it to the defendants (and one can generally conclude that the defendant did not have a lawyer at the pre-trial stage if s/he appears in court without a lawyer). Thus, the monitoring revealed several cases where the defendant declined to be represented by a lawyer solely on the ground of lack of financial means and the judge did not make any effort to explain that s/he had the right to a State appointed lawyer. The monitors also noted instances where the judge allowed defence counsel little time to prepare the case, which negatively affected the quality of legal representation.

In cases where the lawyer was State appointed, the monitors often observed poor performance. The appointment procedure is also conducive to poor representation, in particular when lawyers are appointed shortly before the hearing starts, which might not leave sufficient time to prepare an effective defence. The monitoring also revealed that clients often have a low level of confidence in State appointed lawyers.

In the case against Emin Abdullayev and Adnan Hajizade, both charged under Articles 127.2.3 and 221.2.1 of the Criminal Code – deliberate causing of less serious injuries and hooliganism committed by a group of persons, at Sabail District Court on 04 September 2009, at the preparatory hearing, the defence counsel raised a motion to return the case to the prosecution for further investigation. In support of the motion, the defence counsel submitted that the accused's' right to legal assistance had been violated during the preliminary investigation stage. According to the motion, the accused, immediately after their detention, requested the investigator to provide them with the lawyer of their choice, who was reportedly present at the place of detention. The investigator, however, disregarded the accused's choice, and invited a different State appointed lawyer. The motion further alleged that the State appointed defence counsel, having failed to render any legal assistance, was not present during the interrogation, which lasted for five hours at night. Moreover, while the accused refused to sign the interrogation protocol, the State appointed defence counsel signed it on behalf of the accused against their will. Notwithstanding these serious allegations, the judge dismissed the defendants' motion, without reasoning.

Cases where the judge did not explain the right to free legal assistance to the accused and the hearing continued without a lawyer:

- In the case against Elnur Guliyev, charged under Article 132 of the Criminal Code – battery, at Ganja Kapaz District Court on 09 June 2009, the accused did not have a defence counsel. The judge did not inquire with the defendant why he was not represented, nor did he explain to him the right to free legal assistance.

- Case against Khayal Verdiyev and Seymur Adigozalov, charged under Articles 177.2.1, 177.2.2 and 177.2.3 of the Criminal Code – gross theft committed during unlawful entry, at Ganja Kapaz District Court on 02 June 2009.

In both cases, the hearings continued without defence counsel.

The monitoring also revealed a worrying practice of *automatic acceptance by judges of the accused's waiver of the right to be represented by a lawyer*, without explaining the consequence of such waiver.[95] Moreover, in some cases, the judges seemed to suggest to the defendant to renounce his/her right to be represented by a lawyer.

In the following cases the judge accepted the defendant's waiver to be represented by a lawyer, without realising the <u>*moral*</u> *(emphasis added) obligation to explain the legal consequences of this waiver*:

- Case against Chingiz Guliyev, charged under Article 294.1 of the Criminal Code – fraud of evidences, at the Shirvan City Court on 30 March 2009;

- Case against Tofig Gurbanov, charged under Article 132 of the Criminal Code – battery, at the Sabunchu District Court on 29 March 2009;

- Case against Zamin Huseynov, charged under Articles 29 and 177.2.3 of the Criminal Code – attempted theft committed during unlawful entry, at the Sabunchu District Court on 31 March 2009;

- In the case against Gabil Huseynov, Sakhvat Huseynov and Khanlar Jamalov, charged under Article 132 of the Criminal Code – battery, at the Shaki City Court on 29 March 2009, after having suggested a specific defence counsel to the accused, the judge did not give them any opportunity to request a different State appointed lawyer or to contract the lawyer of their choice. When the accused did not respond to this suggestion, the judge immediately requested the accused to sign a waiver refusing legal assistance;

[95] While the provision of such explanation is not required by law, this should be considered as a moral obligation in view of the important interests at stake.

- Case against Ilgar Guliyev, charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 06 April 2009;

- Case against Vugar Rasulov and Rashadat Huseynov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Shirvan City Court on 08 April 2009;

- Case against Rasim Huseynov, charged under Article 177.1 of the Criminal Code – theft, at the Shirvan City Court on 06 April 2009;

- Case against Emin Suleymanzade, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, at the Shirvan City Court on 09 April 2009;

- Case against Eldaniz Gurbanov, charged under Article 128.1 of the Criminal Code – deliberate causing light injuries, at the Shirvan City Court on 10 April 2009;

- In the case against Mahmud Mahmudov, charged under Article 177.1 of the Criminal Code – theft, at the Sumgayit City Court on 06 April 2009, the presiding judge correctly announced the right of the accused to free legal assistance without any further explanation. However, when the accused refused to be represented by defence counsel, the judge did not inquire about the reasons for the accused's refusal;

- The same was observed during the hearing in the case against Mustafa Ibrahimov, charged under Article 177.1 of the Criminal Code – theft, at the Shaki City Court on 06 April 2009;

- In the case against Elnur Guliyev, charged under Article 132 of the Criminal Code – battery, at Ganja Kapaz District Court on 09 June 2009, the accused was not represented by a defence counsel. The judge did not inquire with the defendant why he was not represented, nor did he explain to him the right to free legal assistance;

- Similar violations in the same court were previously observed in the case against Khayal Verdiyev and Seymur Adigozalov, charged under Articles 177.2.1, 177.2.2 and 177.2.3 of the Criminal Code – gross theft committed during unlawful entry, on 02 June 2009. The hearing continued without defence counsel;

- In the case against Telman Huseynov and Tahir Feyzullayev, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Garadagh District Court on 14

July 2009, at the preparatory hearing the accused were not represented by a defence counsel. Nevertheless, the judge did not explain to them their right to free legal assistance, but simply inquired as to whether they needed a lawyer. While representation would have been required under the law for this preparatory hearing, the judge did not appoint a compulsory defence counsel. Further, the presiding judge requested the accused to sign a waiver in writing;

- Case against Mehdi Mammadov, charged under Articles 177.2.1, 177.2.3 and 177.2.4 of the Criminal Code – gross theft by a group of persons committed during unlawful entry, at Nasimi District Court on 08 June 2009;

- Case against Svetlana Abdullayeva, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, at Nasimi District Court on 08 June 2009;

- Case against Niyaz Sharifov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Nasimi District Court on 16 June 2009;

- Case against Vugar Guliyev, charged under Article 221.3 of the Criminal Code – hooliganism, at Ganja Kapaz District Court on 16 June 2009;

- Case against Hikmat Aliyev and Mais Nazarov, charged under Article 221.1 of the Criminal Code – hooliganism, at Astara District Court on 17 June 2009;

- Case against Vahid Salahov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, at the Sumgayit City Court on 29 June 2009; and

- Case against Namig Abdullayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Narimanov District Court on 01 July 2009.

Cases where the accused refused to be represented by a lawyer due to lack of sufficient means or where the defendant appeared without a defence lawyer, and the judge failed to explain the right to free legal assistance:

- Case against Tarlan Ahmadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Shaki City Court on 08 April 2009. While the presiding judge informed the accused about his right to free legal assistance, the accused did not seem to understand this right as he refused the legal assistance based on his indigent status. Despite this, the judge did not explain further the right to free legal assistance, and instead requested the accused to confirm his waiver in writing;

- In the case against Elshan Pashayev, charged under Articles 32.3 and 221.2.1 of the Criminal Code – hooliganism, at the Sumgayit City Court on 10 April 2009, while the accused appeared at the trial without a defence counsel, the presiding judge did not explain to him his right to free legal assistance. Moreover, the judge requested that the accused confirmed his refusal of legal aid in writing.

Similar violations were observed in the following cases:

- Case against Musa Taghiyev and Fuzuli Huseynov, charged under Article 132 of the Criminal Code – battery, at Binagadi District Court on 29 April 2009;

- Case against Parvar Hasanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Binagadi District Court on 21 April 2009;

- Case against Javid Akbarov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at Narimanov District Court on 20 April 2009;

- Case against Faniz Safarov, charged under Article 180.1 of the Criminal Code – robbery, at Narimanov District Court on 23 July 2009;

- Case against Tahmasib Guliyev, charged under Articles 127.5.3 and 315.1 of the Criminal Code – deliberate causing of less serious injuries and resistance to or using violence against a State official in his official capacity, at Absheron District Court on 21 April 2009;

- Case against Ilgar Adiyev, charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 14 April 2009;

- Case against Anar Khalafov, charged under Articles 178.2.4 and 320.1 of the Criminal Code – gross fraud and forgery of official documents for the purpose of using or selling, at the Sumgayit City Court on 14 April 2009;

- Case against Aynura Bayramova, charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 13 April 2009;

- Case against Zafar Shafiyev charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 13 April 2009;

- Case against Zahid Khudaverdiyev, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, at the Sumgayit City Court on 28 April 2009;

- Case against Nizami Balayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgayit City Court on 22 April 2009;

- Case against Mammadtaghi Sadayev, charged under Article 228.4 of the Criminal Code – illegal possession of gas weapon or cold steel weapon, at the Sumgayit City Court on 19 June 2009;

- Case against Nizami Mahmudov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgayit City Court on 24 July 2009;

- Case against Mustafa Ibrahimov, charged under Article 177.1 of the Criminal Code – theft, at the Shaki City Court on 06 April 2009;

- Case against Niyamaddin Alijanov, charged under Article 177.1 of the Criminal Code – theft, at the Shirvan City Court on 14 April 2009;

- Case against Vugar Bekimatov, charged under Article 221.3 of the Criminal Code –hooliganism, at the Shirvan City Court on 15 April 2009;

- Case against Teymur Babayev, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, at the Shirvan City Court on 23 April 2009;

- Case against Aliaga Naghiyev, Ramin Gurbanov and Ramin Ahmadov, charged under Article 234 of the Criminal Code – illegal possession of drugs, at the Shirvan City Court on 28 April 2009;

- Case against Ali Hajiyev, charged under Article 221.3 of the Criminal Code – hooliganism, at the Ganja Kapaz District Court on 10 June 2009;

- Case against Elnur Guliyev, charged under Article 132 of the Criminal Code – battery, at the Ganja Kapaz District Court on 17 June 2009; and

- Case against Zahid Khubaliyev charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Lankaran District Court on 05 June 2009.

In the case against Namig Abdullayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Narimanov District Court on 25 June 2009, the accused did not have a defence counsel. Having inquired whether he had a lawyer, the presiding judge did not explain to the accused his right to free legal aid. A similar violation was observed in the case against Rza Guliyev, charged under Article 178.2.4 of the Criminal Code – gross fraud, at the Sumgayit City Court on 24 June 2009.

In the case against Parvin Hamidov and Huseynaga Asgarov, charged under Article 181.2.3 of the Criminal Code – burglary, at the Court of Grave Crimes on 22 July 2009, one of the accused did not have a defence counsel. When the judge suggested to him to engage a defence counsel, the accused's parents intervened, stating that they did not have enough means to hire a defence counsel. However, the presiding judge did not explain the right to free legal aid.

In the case against Zaur Aliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Narimanov District Court on 29 July 2009, having appeared without legal defence at the hearing, the presiding judge asked the accused if he needed a lawyer. When the accused declined, the presiding judge did not explain the right to free legal aid and the consequences of the refusal of legal defence as a moral rather than legal obligation, and instead requested the accused to sign a written waiver.

In the case against Abulfaz Imanov, charged under Article 221.2.2 of the Criminal Code – hooliganism, at the Sumgayit City Court on 29 October 2009, the accused did not have a defence counsel. At the hearing, the judge asked him if he needed a lawyer without explaining to him the right to free legal aid. When the accused refused to be represented by defence counsel, the judge did not inquire about the reasons for the refusal and requested the accused to waive his right in writing.

Case where a defence lawyer was appointed only at the request of another trial participant after the judge had failed to appoint a defence lawyer or to explain the right to legal assistance:

While Article 299.10 of the CPC provides that participation of a defence counsel at the preparatory hearing is compulsory unless refused by the accused, the Project Team observed a violation of this requirement in the case against Fakhraddin Ismayilov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, at the Ganja Kapaz District Court on 10 June 2009. Although the accused appeared at the preparatory hearing without defence counsel, the presiding judge, having asked the defendant whether he needed a defence counsel, did not appoint a defence lawyer. However, following the prosecutor's explanation on the necessity of defence counsel in light of the accused's mental illness, the presiding judge postponed the hearing to ensure appointment of a defence counsel.

The monitors observed instances where judges appointed lawyers to provide legal assistance shortly before the trial, infringing the defence right to adequate time and facilities to prepare their defence. For example, in the

case against Shamil Huseynov, charged under Article 221.1 of the Criminal Code – hooliganism, at Garadagh District Court on 01 April 2009, the judge provided the accused with a State appointed lawyer. However, he only postponed the hearing for half an hour to allow the advocate to become familiar with the case materials.

In the following cases, the Project Team reported poor quality of legal services provided by the State appointed defence counsel, and failure to perform responsibilities competently. In most cases, the State appointed defence counsel, after reviewing the indictment and supporting materials at the hearing on the merits, generally remained silent during the rest of the proceedings:

- In the case against Gunduz Agayev, charged under Article 342.2 of the Criminal Code – negligence in service, causing serious consequences, at the Shaki Court of Appeal on 01 April 2009, the accused complained about the State appointed lawyer. According to the accused, the defence counsel did not meet with him or with the witnesses. He also failed to request the investigation materials.

- In the case against Vladimir Piriyev, charged under Articles 234.1 and 237.1 of the Criminal Code – illegal possession of drugs and illegal production of plants which contain drugs, at Sabail District Court on 12 May 2009, the State appointed lawyer, having asked the accused incriminating questions, received a warning from the presiding judge, who reminded the defence counsel that his duties were to defend, not to prosecute.

- In the case against Abbaskhan Mammadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Sabail District Court on 14 May 2009, after arriving late at the hearing, the State appointed defence counsel also left the hearing early, when the judge started deliberations, and did not return for the reading of the judgment.

- In the case against Agaveys Huseynov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, at the Court of Grave Crimes on 01 June 2009, the accused was not represented by a defence counsel and refused free legal assistance, because he did not trust the State appointed lawyers.

- In the case against Amargulu Yamudov, charged under Article 132 of the Criminal Code – battery, at Nasimi District Court on 02 June 2009, the State appointed defence counsel was not rendering effective legal assistance. For example, he was speaking on his mobile phone while the accused was interrogated at the hearing.

- In the case against Fizuli Aliyev and Ilgar Imanov, charged under Article 126.1 of the Criminal Code – Deliberately causing serious injuries to health, at the Court of Grave Crimes on 04 August 2009, the State appointed defence counsel did not provide effective legal representation. The only

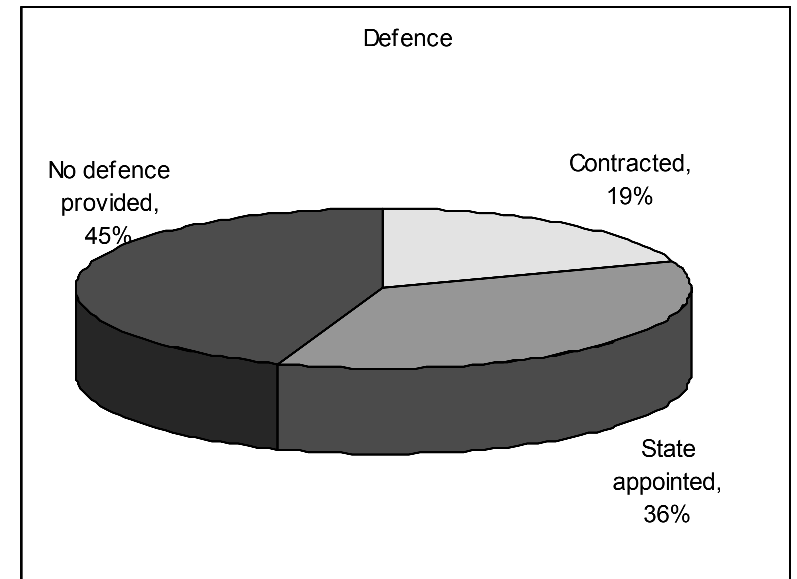
question that he asked the accused during the hearing was "*Do you regret that you committed a crime*?" Defence counsel did not raise any motions nor question any witnesses.

Example where defence counsel was not allowed sufficient time to prepare the defence:

A concern was raised in relation to the case of Elkhan Shiriyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at Khatai District Court on 07 May 2009. The presiding judge allocated only two hours for the defence counsel to prepare his defence, notwithstanding that the lawyer had requested three days. While the defence counsel objected to such insufficient time for preparation, the judge rejected the objection without justification.

PROVISION OF LEGAL ASSISTANCE OR SERVICES IN 2009

COURTS	Privately contracted counsels	State appointed	No defence provided	TOTAL
Baku Court of Appeal	20	6	6	32
Ganja Court of Appeal	5	0	9	14
Shaki Court of Appeal	8	4	17	29
Shirvan Court of Appeal	3	0	1	4
Sumgayit Court of Appeal	7	1	6	14
Court of Grave Crimes	43	64	25	132
Absheron District Court	4	3	9	16
Azizbayov District Court	3	7	0	10
Binagadi District Court	9	34	24	67
Garadagh District Court	2	7	20	29
Khatai District Court	19	63	18	100
Narimanov District Court	14	19	40	73
Nasimi District Court	9	27	19	55
Nizami District Court	6	41	21	68
Sabail District Court	4	27	12	43
Sabunchu District Court	7	33	37	77
Surakhani District Court	6	24	19	49
Yasamal District Court	15	21	39	75
Ganja-Kapaz District Court	4	0	26	30
Ganja-Nizami District Court	6	1	16	23
Shaki City Court	2	0	13	15
Shirvan City Court	1	0	16	17
Sumgayit City Court	5	5	58	68
Astara District Court	0	0	14	14
Gabala District Court	0	0	1	1
Gakh District Court	1	0	0	1
Goranboy District Court	0	1	1	2
Guba District Court	0	0	6	6
Gusar District Court	0	2	1	3
Khachmaz District Court	0	0	2	2
Lankaran District Court	8	2	6	16
Mingachevir District Court	0	0	3	3
TOTAL	**211**	**392**	**485**	**1088**



TOTAL: <u>1,088 criminal cases</u>

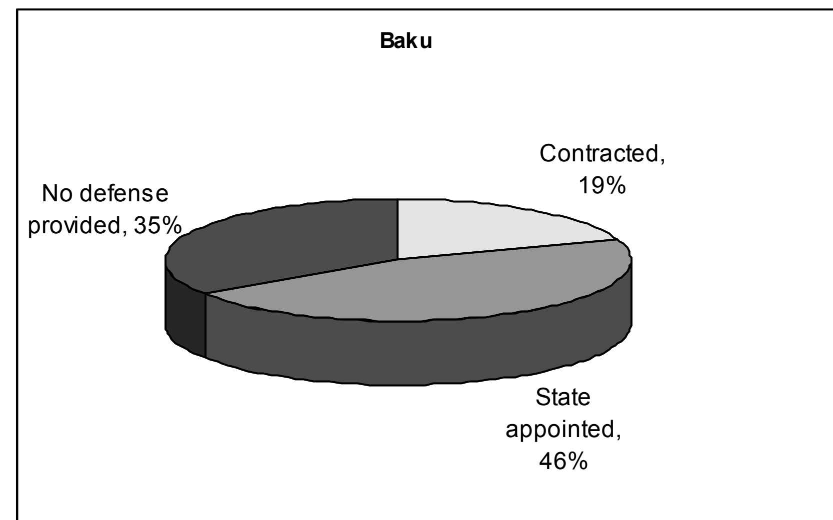
485 cases - no legal assistance provided

392 cases – State appointed defence counsel

211 cases – privately contracted defence counsel

PROVISION OF LEGAL ASSISTANCE OR SERVICES IN BAKU IN 2009

COURTS	Privately contracted counsels	State appointed	No defence provided	TOTAL
Baku Court of Appeal	20	6	6	32
Court of Grave Crimes	43	64	25	132
Azizbayov District Court	3	7	0	10
Binagadi District Court	9	34	24	67
Garadagh District Court	2	7	20	29
Khatai District Court	19	63	18	100
Narimanov District Court	14	19	40	73
Nasimi District Court	9	27	19	55
Nizami District Court	6	41	21	68
Sabail District Court	4	27	12	43
Sabunchu District Court	7	33	37	77
Surakhani District Court	6	24	19	49
Yasamal District Court	15	21	39	75
TOTAL	**157**	**373**	**280**	**810**



TOTAL: 810 criminal cases

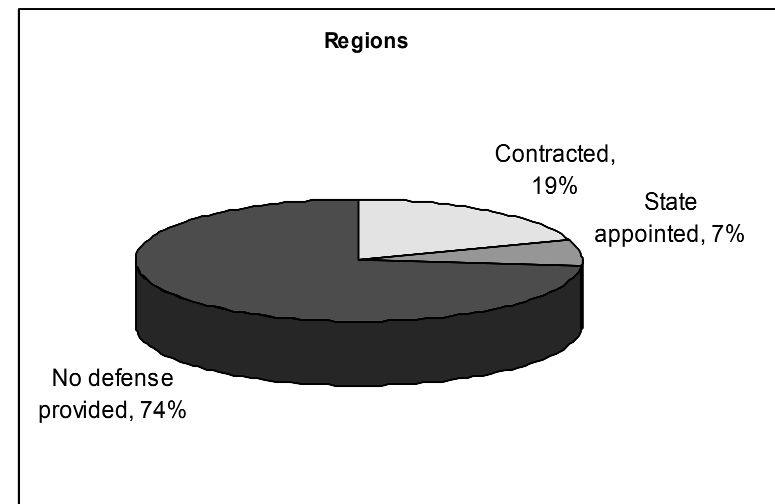
280 cases - no legal assistance provided

373 cases – State appointed defence counsel

157 cases – privately contracted defence counsel

PROVISION OF LEGAL ASSISTANCE OR SERVICES IN THE REGIONS IN 2009

COURTS	Privately contracted counsels	State appointed	No defence provided	TOTAL
Ganja Court of Appeal	5	0	9	14
Shaki Court of Appeal	8	4	17	29
Shirvan Court of Appeal	3	0	1	4
Sumgayit Court of Appeal	7	1	6	14
Absheron District Court	4	3	9	16
Ganja-Kapaz District Court	4	0	26	30
Ganja-Nizami District Court	6	1	16	23
Shaki City Court	2	0	13	15
Shirvan City Court	1	0	16	17
Sumgayit City Court	5	5	58	68
Astara District Court	0	0	14	14
Gabala District Court	0	0	1	1
Gakh District Court	1	0	0	1
Goranboy District Court	0	1	1	2
Guba District Court	0	0	6	6
Gusar District Court	0	2	1	3
Khachmaz District Court	0	0	2	2
Lankaran District Court	8	2	6	16
Mingachevir District Court	0	0	3	3
TOTAL	**54**	**19**	**205**	**278**



TOTAL: 278 criminal cases

205 cases – no legal assistance provided

19 cases – State appointed defence counsel

54 cases – privately contracted defence counsel

10. The Right to Free Assistance of an Interpreter

Article 6 (3) e of the ECHR states that everyone charged with a criminal offence has the right:

> *"[...] to have the free assistance of an interpreter if he [or she] cannot understand or speak the language used in court".*

This right guarantees the right of an accused to participate effectively in a criminal trial that is brought against him or her, which includes, *inter alia*, not only the accused's right to be present, but also to hear and follow the proceedings.[96] Thus, an accused, who cannot understand or speak the language used in court, has the right to free assistance of an interpreter for the translation or interpretation of documents or statements in the proceedings, in order to have the benefit of a fair trial.[97]

Hence, the accused has the right not only to be provided with interpretation during oral court hearings, but also to be provided with the translation of necessary court documents and/or case materials. However, Article 6 (3) e of the ECHR does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him or her and to defend himself or herself, notably by being able to put before the court his or her version of the events.[98]

Article 6 (3) e of the ECHR does not grant the defendant the right to use a specific language or his/her native language. It is in compliance with the ECHR if proceedings are held in a language that the defendant is conversant in, e.g., that s/he can understand and speak the language of the proceedings, or if interpretation is provided to the defendant in a language s/he does understand and speak.[99]

Regarding the adequacy of interpretation, it is the judge's obligation, as "*the ultimate guardian of the fairness of the proceedings*",[100] to verify whether or not the defendant needs interpretation and to ensure that s/he receives adequate interpretation. The interpretation or translation provided should be of a standard which enables the accused to understand the proceedings, exercise his/her right of defence and for the tribunal or court and other parties to the proceedings to understand the testimony of the accused.[101]

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[96] See *Standford v. United Kingdom*, ECtHR Judgment of 23 February 1994, para 26.
[97] See *Luedicke, Belkacem and Koç v. Germany*, ECtHR Judgment of 28 November 1978, para 48.
[98] See *Kamasinski v. Austria*, ECtHR Judgment of 19 December 1989, para 74.
[99] See for a detailed analysis of the ECtHR's jurisprudence on this matter Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, p. 330.
[100] See *Cuscani v. United Kingdom*, ECtHR Judgment of 24 December 2002, paras 38-39.
[101] See "Trial Observation Manual for Criminal Proceedings", Practitioners Guide No. 5, International Commission of Jurists.

In Azerbaijan, if the parties do not understand the language used in court, Articles 26.2 and 26.2.2 of the CPC provide that the judicial authority shall guarantee, *inter alia*, "*the right to use the services of an interpreter free of charge during the investigation and the court hearings, to be fully familiar with all documents relating to the case and the criminal prosecution and to use their mother tongue in court*."

According to Articles 99.4 and 99.4.2 of the CPC, it is the duty of the translator "*to present to the prosecuting authority documentation which confirms his knowledge of the language to be interpreted; at the request of the prosecuting authority or, in court, of the parties to the criminal proceedings, to estimate correctly his ability to translate fully and accurately*." Article 356.3 of the CPC further states that "*if the final court decision on the results of the court's examination of the case is drawn up in a language unknown to the accused, as soon as it has been delivered, it shall be read out to the accused by the interpreter in his mother tongue or another language known to him*".

Given the scope of the Trial Monitoring Programme to observe only court hearings without reviewing the case materials or interviewing accused persons about their experiences at the pre-trial stage, the findings of the present report concern only interpretation during court hearings.

The Project Team noted the following main issues in respect of the observance of the right to free assistance of an interpreter:

- there were cases where interpretation was not provided as needed. This seems to be mostly due to a lack of interpreters employed by the court administration;
- many courts do not use qualified interpreters, but rather provide interpretation by the court administrative staff;
- interpretation is usually selective, whereby the interpreter chooses at his/her own discretion what to interpret without court supervision; and
- there were cases where the judge did not explain the rights and duties of the interpreter, and did not warn them of potential criminal liability for misinterpretation.

Case examples when interpretation was not provided:

- In the case against Tomaz Gedevanishvili, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Narimanov District Court on 16 March 2009, the accused, a citizen of Georgia, did not understand the Azerbaijani language. During the hearing, the accused stated that he had not been provided with the relevant translation of the case materials, and that he was therefore not fully prepared for his defence. Nevertheless, the presiding judge decided to continue with the case without arranging for interpretation services.

- In the case against Konstantin Shevchenko, charged under Article 221.3 of the Criminal Code – hooliganism, at Khatai District Court on 24 April 2009, despite the fact that the accused did not understand the Azerbaijani language, the court hearing was conducted in that language without interpretation into Russian.

- Case against Eldar Mahmudov, charged under Article 132 of the Criminal Code – battery, at Guba District Court on 09 June 2009. The accused did not know the Azerbaijani language and therefore had difficulties when questioned. The presiding judge did not provide the accused with an interpreter. At the trial, relatives of the accused mentioned repeatedly his poor knowledge of the Azerijbani language.

Examples when the interpreters were not specifically warned about criminal liability for false translation:

- In the case against Deepak Philvani, charged under Article 200.2.3 of the Criminal Code – deceit of consumers or manufacturing and selling of lower-quality products, at Khatai District Court on 05 June 2009, the accused was a citizen of India and could not understand the Azerbaijani language. He was assisted by an interpreter from his place of work. However, the judge failed to explain to the interpreter his rights and duties and did not alert him to the criminal responsibility in case of false interpretation.

- Case against Vladislav Nazarov, charged under Article 180.1 of the Criminal Code – robbery, at the Sumgayit City Court on 10 December 2009. The judge failed to explain the rights and duties of the person interpreting from Azerbaijani into Russian for the accused. Notwithstanding this, the judge asked the translator to sign a written notification confirming that she had been informed about her rights and duties.

Case examples of good practice:

- In the case against Mohsen Roohi-hir, charged under Article 178.3.2 of the Criminal Code – fraud by abuse of official authority, at the Court of Grave Crimes on 24 April 2009, the accused, an Iranian citizen, was provided with the services of a certified interpreter.

- In the case against Alikhan Khasuyev, charged under Articles 228.1 and 279 of the Criminal Code – illegal possession of fire-arms and establishment of illegal armed formations or groups, at the Court of Grave Crimes on 08 May 2009, the accused did not speak the Azerbaijani language and was provided with certified interpretation.

11. The Right to a Reasoned Judgment

Article 6 (1) of the ECHR requires judges to provide a reasoning in their judgments. One of the functions of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility of appeal and review by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice.[102]

But this right cannot be understood as requiring a detailed answer to every argument.[103] The extent to which this duty applies may vary according to the nature of the decision. The question whether a court has failed to fulfil the obligation to state reasons or not, can be determined only in light of the circumstances of a particular case.[104]

The right to have a duly reasoned judgment applies at all stages of criminal proceedings, including the appeal stage. This right entails that the court ruling must include the essential findings, evidence and legal reasoning on which the tribunal or court based its judgment.[105]

For example, in the case of *Hadjianastassiou v. Greece*,[106] Article 6 (1) of the ECHR was violated because the court judgment provided to the applicant was only a summary of the full judgment. The failure to make available the text of the judgment to those concerned may result in a breach of the right to defence and, in particular, the right to challenge that decision before a higher court.

In Azerbaijan, under Articles 27 and 356 of the CPC, judgments shall be pronounced publicly. In accordance with Article 356.1 of the CPC, "*after the court's final decision on the results of its examination of the case has been signed, the court shall return to the courtroom and the decision shall be delivered by the court president or, if it is long, by the other members of the court in turn*". Article 356.3 of the CPC further states that "*if the final court decision on the results of the court's examination of the case is drawn up in a language unknown to the accused, as soon as it has been delivered, it shall be read out to the accused by the interpreter in his mother language or another language known to him*".

The Project Team noted that in most observed cases, the judges did not read out to the accused the full text of their judgments, but limited themselves to the reading of those parts which were related to the conclusions and sanctions. As a result, it was unclear for the defence what the reasoning of the decision was, as established

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[102] See *Suominen v. Finland*, ECtHR Judgment of 24 July 2003, para 37.
[103] See *Van de Hurk v. the Netherlands,* ECtHR Judgment of 19 April 1994, para 19.
[104] See *Hiro Balani v. Spain*, ECtHR Judgment of 9 December 1994, para 27. See also *Ruiz Torija v. Spain*, ECtHR Judgment of 9 December 1994, para 29.
[105] See "Trial Observation Manual for Criminal Proceedings", Practitioners Guide No. 5, International Commission of Jurists.
[106] See *Hadjianastassiou v. Greece,* ECtHR Judgment of 16 December 1992, paras 31-37.

under Articles 349.3, 352.3 and 353.2 of the CPC. The Project Team has also noted several instances when the accused was not notified of the right to appeal.

Case examples when the judgment was not read in full and the judge did not explain the right to appeal to the accused as provided by Article 356 of the CPC:

- In the case against Sahil Aliyev, charged under Article 204.1 of the Criminal Code – preparation and sale of counterfeit money, at the Sumgayit City Court on 11 August 2009, when reading the conclusion of the judgment, the presiding judge did not explain the right to appeal or the period within which the appeal should be filed.

- A similar violation was observed in the case against Aynur Ahmadova, charged under Article 132 of the Criminal Code – battery, at the Sumgayit City Court on 03 September 2009.

- In the case against Manaf Pashayev, charged under Article 177.2.2 of the Criminal Code – repeated theft, at Garadagh District Court on 16 September 2009, the judge read out only the sentencing part of the judgment, including the penalties, but did not provide any reasoning.

- The same was observed in the case against Mehdi Mehdiyev, charged under Article 192.1 of the Criminal Code – illegal business, at Narimanov District Court on 07 October 2009.

- In the case against Anar Aliyev, charged under Article 221.1 of the Criminal Code – hooliganism, at Narimanov Distrit Court on 10 November 2009, the judge read out only the sentencing part of the judgment instead of the full text including the reasoning section.

- Similar violations were observed in the case against Emin Huseynov, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, at the Sumgayit City Court on 18 November 2009.

- Case against Emin Abdullayev and Adnan Hajizade, charged under Articles 127.2.3 and 221.2.1 of the Criminal Code – deliberate causing of less serious injuries and hooliganism committed by a group of persons, at Sabail District Court on 11 November 2009.

- In the case against Ziya Gulamali, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, at the Sumgayit City Court on 28 September 2009, the judge read out only the sentencing part of the judgment without providing any reasoning. Moreover, the judge did not

explain to the accused his right to and the terms of appeal, even though the accused did not have a defence counsel.

- The Project Team reported similar shortcomings in the cases against Mehman Gurbanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, at the Sumgayit City Court on 15 December 2009, and against Abulfaz Imanov, charged under Article 221.2.2 of the Criminal Code – hooliganism, at the Sumgayit City Court on 30 October 2009.

- In the case against Vladislav Nazarov, charged under Article 180.1 of the Criminal Code – robbery, at the Sumgayit City Court on 10 December 2009, the judge read out only the part of the judgment relating to the sanction without giving any reasoning, and did not explain to the accused the right to and the terms of appeal to the judgment.

12. Inadequate Records of Evidence and Court Proceedings

Under Article 98.2.2 of the CPC, transcripts of court proceedings, including oral motions, objections, statements and testimonies shall be entered into the protocol in a full and accurate manner. Articles 98.2, 98.2.1 and 98.2.2 of the CPC impose a duty on the court clerk:

> "*to be present in the courtroom throughout the time required to draw up the record of the hearing, and not to leave the room without the permission of the court president; to fully and accurately record the course of the court proceedings, the court decisions, the applications, objections, evidence and submission of parties to the proceedings and the other matters which must be mentioned in the record*".

Generally, the Project Team noted that records were duly kept. However, there were several hearings in which monitors raised concerns regarding the accuracy of record keeping. Specifically, in some instances, the court clerk did not take notes at all, or only occasionally.

In the following hearings, monitors noted violations regarding record keeping:

Court of Grave Crimes (Baku)

- Case against Sahib Aliyev and Emin Agayev, both charged under Articles 120 and 221 of the Criminal Code – deliberate murder and hooliganism, 30 March 2009;
- Case against Eldar Rahimov, charged under Article 177.3.2 of the Criminal Code – gross theft, 30 March 2009;

- Case against Ilham Shamilov and Khanoghlan Nuriyev, charged under Articles 179.3.2, 213.2 and 313 of the Criminal Code – breach of trust by abuse of official authority, tax evasion and an official using a false document or falsifying a genuine document for an unlawful purpose, 06 April 2009;
- Case against Shovgu Etibarov, charged under Article 234.4 of the Criminal Code – illegal possession of drugs for sale purpose, 30 March 2009; and
- Case against Elvin Hasanov, charged under Article 120.1 of the Criminal Code – deliberate murder, 29 March 2009.

Nasimi District Court (Baku)

- Ehtiram Karimov, Seymur Ibrahimov and Ali Huseynov, charged under Article 194.2.4 of the Criminal Code – criminal purchase or selling of property, 10 April 2009.

Sabunchu District Court (Baku)

- Case against Nemat Agayev, charged under Article 263 of the Criminal Code – breach of traffic rules causing death, 07 April 2009;
- Case against Elchin Valiyev, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 07 April 2009; and
- Case against Sanan Huseynov and Gunel Shirinova, charged under Articles 152, 186.2.1 and 186.2.2 of the Criminal Code – engaging in sexual activity with a person under 16 years of age and deliberate gross destruction of or damage to property, 31 March 2009.

In the case against Vidadi Abulfazov, charged under Article 132 of the Criminal Code – battery, at Astara District Court on 30 June 2009, the court clerk left the courtroom for half an hour during the hearing and after returning he was inattentive to the notes of the hearing.

In the case against Tural Atakishiyev, Parviz Alihasanov and Khayal Abdullayev, charged under Articles 315.1 and 221 of the Criminal Code – resistance to or using violence against a State official in his official capacity and hooliganism, at the Ganja Nizami District Court on 30 June 2009, the court clerk did not record the hearing.

II. Conclusions and Recommendations

As outlined in the present Trial Monitoring Report, the trial observation conducted throughout 2009 revealed that, while there are significant improvements to be noted since the publication of the previous Trial Monitoring Report issued by the Office in 2008, shortcomings have been identified in terms of full compliance with the applicable domestic legislation and relevant fair trial standards.

Of particular concern is the number of cases where credible allegations of torture or inhuman or degrading treatment of accused and witnesses have been raised, but where the court did not ensure the conduction of a proper and adequate investigation of these allegations. As a result, the courts continue to accept tainted evidence without adequately ruling on the accused's and defence motions.

The Office stands ready to continue supporting the ongoing judicial and legislative reforms in Azerbaijan. Therefore, based on the findings included in this Report, the Office suggests the following general recommendations on possible reforms to rectify the irregularities and breaches of fair trial standards identified during the trial observation in order to further improve the Azerbaijani justice sector. The Office is also prepared to support the relevant authorities in the implementation of these recommendations, as required.

1. Judges must adjudicate the cases independently and impartially. Consequently, they should refrain from making any comments that may imply their position as to the guilt of a defendant. Procedural court rulings issued prior to the judgment should not imply guilt of the defendants.

2. Security measures applied to the defendants, in particular the use of pre-trial detention, should be based on individual risk assessments in every case and its use restricted as much as possible in line with the applicable domestic legislation and international standards.[107] These measures should safeguard the presumption of innocence and every effort must be made to prevent humiliating and degrading treatment.

3. Judges should treat both parties to a criminal case equally. For example, the defence should be given an opportunity to include in the case file its own list of witnesses to be examined at the trial. The court should call all witnesses listed in the prosecution and defence lists. Any motions to examine additional witnesses by the parties should be decided by the judge on an individual basis, and rejections should be reasoned. All motions for the examination of additional evidence by either the prosecutor or the defence should be considered in the same court session.

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[107] See also Decision No.2 of the Plenum of the Supreme Court of the Republic of Azerbaijan On the Practice of the Application of Arrest as a Restrictive Measure in respect of the Accused, dated 3 November 2009.

4. The accused shall have full access to effective legal representation, including to a duly qualified State appointed defence lawyer, if he/she so wishes. Further, the defence should be given the opportunity to get genuinely involved in the case. This includes having adequate time and resources to prepare the defence.

5. Judges should exclude any evidence tainted by allegations of torture and ill-treatment, unless the prosecution succeeds in removing any reasonable doubt as to its admissibility. They should further ensure that such allegations are independently and timely examined.

6. Judgments should be reasoned in order to fully ensure due process, and ultimately, the accused's right to defence.

7. Thus, the judges should ultimately ensure that the existing safeguards within the domestic legislation are applied in order to guarantee that a defendant is entitled to a fair trial in accordance with that legislation and relevant international standards.

8. Finally, in order to further increase the knowledge and professionalism of justice personnel to dispense justice, the Office recommends that legal professionals, and notably judges, receive regular information and training on relevant case law, both from Azerbaijani courts, especially the Supreme Court and the ECtHR, in particular as to the practical implications of the accused's right to effective legal representation and the principles of equality of arms and impartiality, including the appearance of impartiality. Defence lawyers should also receive sufficient training to further improve their skills and effectiveness in court, as well as court clerks, who should be specifically trained on how to accurately write official court protocols in line with the requirements of the applicable domestic legislation.

III. Annexes

ANNEX 1

Instances when judges failed to inform and explain to the accused his or her basic rights:

Court of Grave Crimes

- Case against Margarita Alkina, charged under Article 120.2.4 and 120.2.9 of the Criminal Code – deliberate murder committed with special cruelty, 14 April 2009;

Azizbayov District Court

- Case against Hijran Aydinli, charged under Articles 178.2.2 and 320.1.2 of the Criminal Code – repeated fraud, forgery of official documents for the purpose of using or selling, 01 April 2009;

Binagadi District Court

- Case against Azer Guliyev and Mansur Asadullayev, charged under Articles 127.1 and 132 of the Criminal Code – deliberate causing of less serious injuries and battery, 24 April 2009;
- Case against Hatem Zeynalov, charged under Articles 263.1 and 264 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person and escaping from the scene of a traffic accident, 30 April 2009;
- Case against Musa Taghiyev and Fuzuli Huseynov, charged under Article 132 of the Criminal Code – battery, 29 April 2009;
- Case against Durdana Ahmadova, charged under Article 221.1 of the Criminal Code – hooliganism, 01 May 2009;
- Case against Eldar Murguzov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 04 May 2009;

Khatai District Court

- Case against Nurlan Karimov, charged under Article 176.1 of the Criminal Code – intentionally not supporting dependent children and/or parents, 29 March 2009;
- Case against Ramiz Ismayilov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 29 March 2004;
- Case against Tofig Ahmadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 07 April 2009;
- Case against Rza Dadashov, Bayram Zamanov and Nijat Abdullayev, charged under Article 178 of the Criminal Code – fraud, 21 April 2009;

- Case against Kanan Behbudov, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 28 April 2009;
- Case against Denis Gordiyev, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, 05 May 2009;

Narimanov District Court

- Case against Shummani Kayaji, charged under Article 221.1 of the Criminal Code – hooliganism, 16 April 2009;
- Case against Sabuhi Veyisov, charged under Articles 178.2.1, 178.2.2 and 178.2.4 of the Criminal Code – repeated gross fraud, 21 April 2009;
- Case against Mehman Mollayev and Sahaddin Agayev, charged under Articles 320.1, 320.2, 310, 168.2.1, 178.2.2 and 178.2.4 of the Criminal Code – forgery of official documents for the purpose of using or selling, infringement of persons' rights under the pretext of exercising religious worship, causing damage by pretending to represent an official authority and repeated gross fraud, 05 May 2009;

Nasimi District Court

- Case against Nadin Israfilov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 01 April 2009;
- Case against Shukufa Ibrahimova, charged under Article 132 of the Criminal Code – battery, 06 April 2009;
- Case against Elshan Jahiyev, charged under Article 180.1 of the Criminal Code – robbery, 09 April 2009;
- Case against Elshad Javadov, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 27 April 2009;

Nizami District Court

- Case against Tural Hasanov, charged under Article 177.2.2 of the Criminal Code – repeated theft, 31 March 2009;

Sabunchu District Court

- Case against Azad Mahmudov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 14 April 2009;
- Case against Tofig Gurbanov, charged under Article 132 of the Criminal Code – battery, 29 March 2009;
- Case against Zamin Huseynov, charged under Article 29 and 177.2.3 of the Criminal Code – attempted theft committed during unlawful entry, 31 March 2009;

- Case against Mubariz Abdullayev and Nurlan Abdullayev, charged under Article 132 of the Criminal Code – battery, 10 April 2009;
- Case against Sarvan Bakaliyev, charged under Article 263 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 27 April 2009;
- Case against Sanan Huseynov and Gunel Shirinova, charged under Articles 152, 186.2.1 and 186.2.2 of the Criminal Code – engaging in sexual activity with a person under 16 years of age and deliberate gross destruction of or damage to property, 28 April 2009;
- Case against Mahir Guliyev, charged under Articles 29, 177.2.1, 177.2.2, 177.2.3 and 234.1 of the Criminal Code – attempted repeated theft by a group of persons committed during unlawful entry and illegal possession of drugs, 29 April 2009;

Yasamal District Court

- Case against Khalid Alizade, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 19 March 2009;
- Case against Garibala Huseynov, charged under Articles 221.2.2 and 221.3 of the Criminal Code – hooliganism, 27 April 2009;

Sumgayit City Court

- Case against Vali Ibrahimov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 30 March 2009;
- Case against Elshan Heydarov, charged under Article 221.1 of the Criminal Code – hooliganism, 07 April 2009;
- Case against Zafar Shafiyev, charged under Article 132 of the Criminal Code – battery, 13 April 2009;
- Case against Anar Allahverdiyev, charged under Article 177.1 of the Criminal Code – theft, 17 March 2009;
- Case against Zahid Khudaverdiyev, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, 28 April 2009;

Shaki City Court

- Case against Tarlan Ahmadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 08 April 2009;
- Case against Mursal Rasulov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 07 April 2009;
- Case against Mustafa Ibrahimov, charted under Article 177.1 of the Criminal Code – theft, 13 April 2009;

Shirvan City Court

- Case against Emin Suleymanzade, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, 09 April 2009;

Goranboy District Court

- Case against Mahammad Alasgarov, charged under Article 132 of the Criminal Code – battery, 31 March 2009.

ANNEX 2

Instances when judges failed to clarify if the accused was informed about the charges against him/her and whether s/he has familiarised him/herself with the investigation materials, including the indictment:

Court of Grave Crimes

- Case against Rahima Mukhtarova, charged under Article 120.2.9 of the Criminal Code – deliberate murder of a helpless person, 23 April 2009;

Binagadi District Court

- Case against Durdana Ahmadova, charged under Article 221.1 of the Criminal Code – hooliganism, 01 May 2009;
- Case against Jamil Burjaliyev, charged under Articles 177.2.1, 177.2.3 and 234.1 of the Criminal Code – theft by a group of persons committed during unlawful entry and illegal possession of drugs, 20 April 2009;
- Case against Givami Mammadov and Elshan Isgandarov, both charged under Articles 177.2.1 and 177.2.4 of the Criminal Code – theft of a large amount by a group of persons, 22 April, 2009;
- Case against Hatem Zeynalov, charged under Articles 263.1 and 264 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person and escaping from the scene of a traffic accident, 28 April 2009;
- Case against Musa Taghiyev and Fuzuli Huseynov, charged under Article 132 of the Criminal Code – battery, 29 April 2009;

Khatai District Court

- Case against Ramiz Ismaylov, charged under Article ing of the Criminal Code – deliberate cause of minor injuries, 29 March 2009;
- Case against Sardar Feyzullayev, charged under Article 132 of the Criminal Code – battery, 30 March 2009;
- Case against Kanan Behbudov, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 28 April 2009;

Narimanov District Court

- Case against Sabuhi Veyisov, charged under Articles 178.2.1, 178.2.2 and 178.2.4 – repeated gross fraud, 21 April 2009;

Nizami District Court

- Case against Jeyhun Davidov and Kenan Guliyev, charged under Article 221.3 of the Criminal Code – hooliganism, 16 March 2009;

Sabunchu District Court

- Case against Faig Dadashov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 23 April 2009;
- Case against Vagif Gasimov, charged under Article 132 of the Criminal Code – battery, 23 April 2009;
- Case against Sanan Huseynov and Gunel Shirinova, charged under Articles 152, 186.2.1 and 186.2.2 of the Criminal Code – engaging in sexual activity with a person under 16 years of age and deliberate gross destruction of or damage to property, 28 April 2009;

Surakhani District Court

- Case against Israfil Mammadov and Khalig Yunusov, both charged under Article 221.1 of the Criminal Code – hooliganism, 13 April 2009;

Sumgayit City Court

- Case against Ramiz Maharramov, charged under Article 132 of the Criminal Code – battery, 22 April 2009;
- Case against Kamran Ibiyev, charged under Article 234.1 of the criminal Code – illegal possession of drugs, 23 April 2009;
- Case against Zahid Khudaverdiyev, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, 28 April 2009;

Shaki City Court

- Case against Vasif Almammadov, charged under Article 177.1 of the Criminal Code – theft, 30 March 2009;
- Case against Ziyadkhan Hamidov, charged under Article 221.3 of the Criminal Code – hooliganism, 23 April 2009;
- Case against Ruslan Allahverdiyev, charged under Article 132 of the Criminal Code – battery, 23 April 2009;

Shirvan City Court

- Case against Boyukoglan Mirzayev, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 30 March 2009;
- Case against Aliaga Naghiyev, Ramin Gurbanov and Ramin Ahmadov, charged under Article 234 of the Criminal Code – illegal possession of drugs, 28 April 2009;
- Case against Ramiz Nahmadov, charged under Article 132 of the Criminal Code – battery, 28 April 2009.

ANNEX 3

In the following cases, the presiding judges failed to inform and explain to the accused the right not to incriminate oneself:

Shaki Court of Appeal

- Case against Musa Mahmudov, charged under Article 162.2 of the Criminal Code – violation of labour safety rules, 02 June 2009;

Court of Grave Crimes

- Case against Aziz Hasanov and Jafar Fatihi, charged under Article 120.2.1 of the Criminal Code – deliberate murder, 02 June 2009;
- Case against Khosrov Nusratov, Elmaddin Hamdamov and Heybat Madatov, charged under Articles 234.4.1 and 234.4.3 of the Criminal Code – illegal possession by a group of persons of a gross amount of drugs for sale purposes, on 02 June 2009;
- Case against Mirhashim Seyidzade and Nasir Tabeshmoqhattam, charged under Articles 206 and 234.4.3 – smuggling and illegal possession of a gross amount of drugs for sale purposes, 11 June 2009;
- Case against Shakir Gaziyev, charged under Articles 180 and 234.1 of the Criminal Code – robbery and illegal possession of drugs, 19 June 2009;

Khatai District Court

- Case against Eyvaz Hajialiyev, charged under Article 132 of the Criminal Code – battery, on 03 June 2009;
- Case against Fuad Shabanov, charged under Article 263.2 of the Criminal Code – breach of traffic rules causing death, 02 June 2009;
- Case against Mazahir Mammadov, charged under Article 132 of the Criminal Code – battery, on 01 June 2009;
- Case against Ramin Dursunov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, on 01 June 2009;

- Case against Ramin Valiyev, charged under Article 132 of the Criminal Code – battery, 11 June 2009;
- Case against Ramil Abbasov, charged under Article 213.2.2 of the Criminal Code – gross tax evasion, 12 June 2009;
- Case against Zaur Alishov, charged under Articles 177.2.1, 177.2.2 and 177.2.4 of the Criminal Code – repeated gross theft by a group of persons, 23 June 2009;

Nasimi District Court[108]

- Case against Orkhan Aliyev and Raset Gurbanov, charged under Articles 124.2, 131.1, 131.2 and 187.3 of the Criminal Code – murder on imprudence, causing of minor serious or serious harm to health on imprudence, destruction or damage of property on imprudence, 05 June 2009;
- Case against Mehdi Mammadov, charged under Articles 177.2.1, 177.2.3 and 177.2.4 of the Criminal Code – theft committed by a group of persons with illegal penetration into a dwelling causing significant damage, 08 June 2009;
- Case against Sharif Abdullayev, charged under Article 132 of the Criminal Code – battery, 24 June 2009;
- Case against Rana Sadigova, charged under Article 177.1 of the Criminal Code – theft, 06 July 2009;

Nizami District Court

- Case against Elchin Gurbanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 05 June 2009;

Sabunchu District Court

- Case against Yashar Abudov, charged under Article 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 07 July 2009;

Ganja Kapaz District Court

- Case against Arzu Hagverdiyev, charged under Article 263.2 of the Criminal Code – breach of traffic rules causing death, 09 June 2009;
- Case against Elnur Guliyev, charged under Article 132 of the Criminal Code – battery, 09 June 2009;
- Case against Jeyhun Agayev, Asif Aliyev and Galib Allahverdiyev, charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 08 July 2009;

Lankaran District Court

- Case against Zahid Khubaliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 05 June 2009;

[108] In the following cases, according to the protocols, during the preparatory hearings, presiding judges informed and explained the rights of the accused, including the right not to incriminate themselves. However, the Project Team did not confirm whether the requirements under Article 322.1.11 of the CPC were indeed observed.

- Case against Khagani Aliyev, charged under Article 132 of the Criminal Code – battery, 11 June 2009;
- Case against Vasif Bakhsiyev, charged under Article 256.1 of the Criminal Code – illegal fishing in a large amount, 11 June 2009.

ANNEX 4

Cases when the judge did not ask about violations that occurred during the pre-trial stage at the preparatory hearing, in violation of Article 299.3.2 of the CPC:

Court of Grave Crimes

- Case against Intigam Zeynalabdinov, Anar Hasanov, Siyavush Gulamov, Asif Agayev and Elshad Bayramov, charged under Article 234.4.2 of the Criminal Code – illegal possession of drugs for the sale purpose committed by an organized group, 20 July 2009;
- Case against Ramil Hashimzade and Rovshan Aliyev, charged under Article 144-1.2 of the Criminal Code – trafficking in human beings, 27 July 2009;
- Case against Azer Valiyev and Niyamaddin Guliyev, charged under Articles 263.3 and 143 of the Criminal Code – breach of traffic rules causing the death of two or more persons and leaving (a person whose life or health is) in danger, 14 July 2009;
- Case against Zaur Aliyev and Ilgar Imanov, charged under Article 126.1 of the Criminal Code – Deliberately causing serious injuries to health, 28 July 2009;
- Case against Togrul Mahammadhasanov, charged under Article 126.1 of the Criminal Code – Deliberately causing serious injuries to health, 29 July 2009;
- Case against Aydin Orujov, charged under Articles 149.2.4 and 157.1 of the Criminal Code – rape committed under threat of murder or other aggravating circumstances and unlawful entry into somebody's place of residence, 29 July 2009;
- Case against Ramiz Ismayilov, Akbar Abbasov, Kamran Ismayilov and Amil Mardanov, charged under Article 144.2.3 of the Criminal Code – kidnapping by a group of persons, 21 July 2009;
- Case against Khatira Aliyeva and Rahida Hajiyeva, charged under Article 144-1.1 and 243.1 of the Criminal Code – trafficking in human beings and forcing someone into prostitution, 03 August 2009;
- Case against Huseyn Arabul, charged under Articles 318.1 and 318.2 of the Criminal Code – illegal border crossing, 07 August 2009;
- Case against Ziya Gulamali, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 09 September 2009;
- Case against Fizuli Aliyev and Ilgar Imanov, charged under Article 126.1 of the Criminal Code – Deliberately causing serious injuries to health, 28 July 2009;

Nizami District Court

- Case against Samir Safarov and Amina Gahramanova, charged under Article 132 of the Criminal Code – battery, 28 July 2009;
- Case against Adil Khudaverdiyev and Khanlar Karimov, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, 03 August 2009;
- Case against Seymur Nasirov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 03 August 2009;
- Case against Vugar Sadigov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 04 August 2009;
- Case against Ramil Mehdiyev, charged under Article 263.2 of the Criminal Code – breach of traffic rules causing death, 07 August 2009;
- Case against Asim Hasanov, charged under Article 178.2.2 of the Criminal Code – repeated fraud, 06 August 2009;
- Case against Mehman Mammadov and Rahman Mammadov, charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 22 July 2009;

Narimanov District Court

- Case against Daniel Sokovich, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 30 July 2009;
- Case against Anar Aliyev, charged under Article 221.1 of the Criminal Code – hooliganism, 29 September 2009;

Nasimi District Court

- Case against Rashid Gahramanov, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 06 August 2009;

Sabunchu District Court

- Case against Ismayil Karimov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, 15 September 2009;

Surakhani District Court

- Case against Hamida Guliyeva, charged under Article 132 of the criminal Code – battery, 27 July 2009;
- Case against Rafael Khalilov, charged under Article 180.1 of the Criminal Code – robbery, 29 July 2009;
- Case against Vahid Guliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 30 July 2009;

- Case against Rashid Sadigov, charged under Articles 132 and 221.3 of the Criminal Code – battery and hooliganism, 04 August 2009;
- Case against Mikayil Agayev, charged under Article 152 of the Criminal Code – engaging in sexual activity with a person under 16 years of age, 06 August 2009;

Yasamal District Court

- Case against Sadraddin Gurbanov, charged under Article 306.1, 300.1 and 196 of the Criminal Code – non-compliance with a final judgment or court decision, disclosure of information of preliminary investigation materials, and deliberate evasion from repayment of debts, 14 July 2009;
- Case against Borrom Saeidan, charged under Article 192.2.1 of the Criminal Code – illegal business, 29 July 2009;

Ganja Kapaz District Court

- Case against Ruslan Mammadov, charged under Articles 179.2.3, 179.2.4 and 309.1 of the Criminal Code – gross breach of trust by abuse of official authority and excessive use of official power causing damage to a third party, 04 August 2009;
- Case against Rasim Guliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 09 September 2009;
- Case against Vugar Amirov, charged under Article 263.1 of the Criminal Code – breach of traffic rules causing less serious or serious injuries to a person, 15 October 2009;

Sumgayit City Court

- Case against Vladislav Nazarov, charged under Article 180.1 of the Criminal Code – robbery, 26 November 2009;
- Case against Emin Huseynov, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, 14 October 2009;
- Case against Mehman Gurbanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 04 December 2009;
- Case against Abulfaz Imanov, charged under Article 221.2.2 of the Criminal Code – hooliganism, 15 October 2009.

ANNEX 5

Instances where the judges' offices were used for deliberations:

Binagadi District Court

- Case against Gadir Abdullayev, charged under Article 132 of the Criminal Code – battery, 25 May 2009;

- Case against Valeh Abbasov, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, 02 June 2009;
- Case against Eldar Murguzov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 02 June 2009;
- Case against Anar Mammadov and Vusal Dadashov, charged under Article 177 of the Criminal Code – theft, 29 May 2009;
- Case against Saday Hasanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 01 June 2009;
- Case against Jamil Burjaliyev, charged under Articles 177.2.1, 177.2.3 and 234.1 of the Criminal Code – theft by a group of persons committed during unlawful entry and illegal possession of drugs, 01 June 2009;
- Case against Elnur Heydarov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 23 July 2009;
- Case against Sevinj Mammadova, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 29 June 2009;
- Case against Ganjali Rzayev, charged under Article 221.3 of the Criminal Code – hooliganism, 29 June 2009;
- Case against Gultakin Mustafayeva, charged under Article 132 of the Criminal Code – battery, 08 July 2009;
- Case against Musa Taghiyev, charged under Article 132 of the Criminal Code – battery, 29 April 2009;

Garadagh District Court

- Case against Javid Suleymanov, charged under Articles 263.2 and 264 of the Criminal Code – breach of traffic rules causing death and escaping from the scene of a traffic accident, 21 July 2009;
- Case against Akif Khudatov, charged under Article 256 of the Criminal Code – illegal fishing, 18 August 2009;
- Case against Kheyrulla Khalilov, charged under Article 315 of the Criminal Code – resistance to or using violence against a State official in his official capacity, 19 August 2009;

Narimanov District Court

- Case against Namig Abdullayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 01 July 2009;
- Case against Javid Akbarov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 20 April 2009;

Sabail District Court

- Case against Rashad Nuriyev, charged under Article 221.1 of the Criminal Code – hooliganism, 16 April 2009;
- Case against Kazim Naghiyev, charged under Article 320.1 of the Criminal Code – forgery of official documents for the purpose of using or selling, 20 April 2009;

Shirvan City Court

- Case against Natig Muradov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 17 March 2009;

Sumgayit City Court

- Case against Ilham Gasimov, charged under Article 263.2 of the Criminal Code – breach of traffic rules causing death, 09 April 2009;
- Case against Gulhuseyn Nuriyev, charged under Articles 228.2.1 and 228.2.2 of the Criminal Code – repeated illegal possession and carrying of fire-arms by a group of persons, 08 April 2009;
- Case against Vali Ibrahimov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 08 April 2009;

Guba District Court

- Case against Ziyadkhan Hikmatov, charged under Article 221.1 of the Criminal Code – hooliganism, 04 June 2009;
- Case against Sadraddin Khidirov, charged under Article 132 of the Criminal Code – battery, 10 June 2009.

ANNEX 6

Case examples where the presiding judge did not clarify the witnesses' relationship with other parties of the trial:

Khatai District Court

- Case against Vugar Aliyev, charged under Article 263.2 of the Criminal Code – breach of traffic rules causing death, 16 June 2009;

Nizami District Court

- Case against Teymur Javadov and Ehtiram Jabiyev, both charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 03 June 2009;
- Case against Vahid Aliyev, charged under Articles 221.1 and 127.2.3 of the Criminal Code – hooliganism and deliberate causing of less serious injuries, 02 June 2009;

- Case against Taleh Hashimov and Nazim Abdullayev, bothcharged under Articles 177.2.1 and 177.2.3 of the Criminal Code – theft by a group of persons committed during unlawful entry, on 12 June 2009;

Sumgayit City Court

- Case against Mammadtaghi Sadayev, charged under Article 228.4 of the Criminal Code – illegal possession of gas weapon or cold steel weapon, 19 June 2009;
- Case against Rza Guliyev, charged under Article 178.2.4 of the Criminal Code – gross fraud, 24 June 2009;

Ganja Kapaz District Court

- Case against Elnur Guliyev, charged under Article 132 of the Criminal Code – battery, 17 June 2009;

Lankaran District Court

- Case against Ragib Ramazanov, charged under Article 132 of the Criminal Code – battery, 02 July 2009.

ANNEX 7

Case examples when interpretation was provided by members of the court administration/staff:

Baku Court of Appeal

- Case against Yagut Afandiyeva, Valida Jahangirova, Vafa Aliyeva and Elshan Aliyev, charged under Articles 179 and 313 of the Criminal Code – breach of trust and an official using a false document or falsifying a genuine document for an unlawful purpose, 24 April 2009;

Court of Grave Crimes

- Case against Margarita Alkina, charged under Articles 120.2.4 and 120.2.9 of the Criminal Code - deliberate murder of a helpless person committed with special cruelty, 07, 14 and 21 April 2009;
- Case against Ramil Hashimzade and Rovshan Aliyev, charged under Articles 144-1.2.1, 144-1.2.5 and 144-1.2.6 of the Criminal Code – trafficking in human beings (two or more persons) by an organised group by abuse of official authority, 03 August 2009;

Khatai District Court

- Case against David Jabanashvili, charged under Article 177 of the Criminal Code – theft, 20 April 2009;

Nasimi District Court

- Case against Christina Kulisova, charged under Article 221.1 of the Criminal Code – hooliganism, 14 April 2009;

Nizami District Court

- Case against Sergey Nasinnikov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 10 June 2009;

Sabail District Court

- Case against Grigoriy Vissey, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 29 March and 28 April 2009;

Sabunchu District Court

- Case against Andrey Bespalov, charged under Article 177.2.2 and 177.2.3 of the Criminal Code – repeated gross theft, 19 March, 01 and 06 April 2009;

Surakhani District Court

- Case against Bahlul Ilyasov, charged under Article 132 of the Criminal Code – battery, 30 March 2009;
- Case against Sayyara Heydarova, charged under Articles 221.1, 221.2 and 221.3 of the Criminal Code – hooliganism, 14 April and 22 May 2009;

Yasamal District Court

- Case against Fuad Alakbarov, charged under Article 127.1 of the Criminal Code – deliberate causing of less serious injuries, 16 March 2009.

In the above mentioned cases, the interpretation was carried out selectively based on the discretion of the persons performing interpretation duties. Moreover, the judges presiding over these hearings did not explain to the persons involved in the capacity of interpreters their duties and responsibilities. This violates Article 322.1.4 of the CPC.

ANNEX 8

Case examples when the full text of the judgments was not read out by the judges:

Baku Court of Appeal

- Case against Timur Lyapin and Yevgeniy Morgunov, charged under Articles 177.2.1, 177.2.3 and 177.2.4 of the Criminal Code – gross theft by a group of persons committed during unlawful entry, 25 May 2009;

Shaki Court of Appeal

- Case against Hafiz Alakbarzade, charged under Articles 177.2.2 and 177.2.3 of the Criminal Code – repeated theft committed during unlawful entry, 02 April 2009;
- Case against Elshan Hasanov, charged under Article 234.4.3 of the Criminal Code – illegal possession of drugs for sale purposes by a group of persons, 22 April 2009;
- Case against Elchin Baghirov, charged under Article 221.3 of the Criminal Code – hooliganism, 23 April 2009;

Court of Grave Crimes

- Case against Rashad Nasirov and Elishan Huseynov, charged under Article 180.2.1 of the Criminal Code – robbery, 22 July 2009;

Azizbayov District Court

- Case against Giyas Salmanov and Telman Alihumbatov, charged under Article 228.1 of the Criminal Code – illegal possession of fire-arms, 06 July 2009;
- Case against Elshad Aliyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 07 July 2009;

Binagadi District Court

- Case against Musa Taghiyev and Fuzuli Huseynov, charged under Article 132 of the Criminal Code – battery, 29 April 2009;
- Case against Valeh Abbasov, charged under Article 315.1 of the Criminal Code – resistance to or using violence against a State official in his official capacity, 02 June 2009;
- Case against Eldar Murguzov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 02 June 2009;
- Case against Anar Mammadov and Vusal Dadashov, charged under Article 177 of the Criminal Code – theft, on 29 May 2009;
- Case against Saday Hasanov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, on 01 June 2009;
- Case against Jamil Burjaliyev, charged under Articles 177.2.1, 177.2.3 and 234.1 of the Criminal Code – theft by a group of persons committed during unlawful entry and illegal possession of drugs, on 01 June 2009;

Narimanov District Court

- Case against Zohrab Alasgarov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, 10 June 2009;

- Case against Nijat Akbarov, charged under Article 221.2.1 of the Criminal Code – hooliganism, 02 June 2009;
- Case against Ramin Mammadov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 24 June 2009;
- Case against Zaur Aliyev, charged under Article 234.1 of the Criminal code – illegal possession of drugs, 29 July 2009;
- Case against Khalil Asadullayev, charged under Articles 128 and 134 of the Criminal Code – deliberate causing of minor injuries and threatening a person with murder or serious harm to health, 18 August 2009;
- Case against Irada Mahmudova, charged under Article 206.1 of the Criminal Code – smuggling, 01 September 2009;
- Case against Zaur Zeynalov, charged under Article 221.1 of the Criminal Code – hooliganism, 25 August 2009;

Nasimi District Court

- Case against Emil Aslanov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 22 July 2009;

Sabail District Court

- Case against Mahammad Hajiyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 29 April 2009;
- Case against Emin Abdullayev and Adnan Hajizade, charged under Articles 127.2.3 and 221.2.1 of the Criminal Code – deliberate causing of less serious injuries and hooliganism committed by a group of persons, 11 November 2009;
- Case against Rubail Gandiyev, charged under Articles 263.1 and 263.2 of the Criminal Code – breach of traffic rules causing death, 26 May 2009;

Sabunchu District Court

- Case against Elchin Eyvazov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 25 May 2009;

Surakhani District Court

- Case against Israfil Mammadov and Khalig Yunusov, charged under Article 221.1 and 221.3 of the Criminal Code – hooliganism, 13 April 2009;
- Case against Abdin Agayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 15 April 2009;

- Case against Abulfat Jafarov, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 28 April 2009;
- Case against Yevgeniy Ahmadov, charged under Article 177.2.3 of the Criminal Code – theft committed during unlawful entry, 19 June 2009;
- Case against Ramil Mammadov, charged under Articles 177.2.1 and 177.2.3 of the Criminal Code – repeated theft committed during unlawful entry, 23 July 2009;

Yasamal District Court[109]

- Case against Khanim Sultanova and Bakhtinaz Danyeleva, charged under Articles 127 and 132 of the Criminal Code – deliberate causing of less serious injuries and battery, 09 June 2009;
- Case against Eldar Hajiyev, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 25 June 2009;
- Case against Saleh Khalilov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 03 July 2009;
- Case against Punhan Asgarov, charged under Article 127.1 of the Criminal Code – deliberate causing of less serious injuries, 08 July 2009;
- Case against Farhad Huseynov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 19 August 2009;
- Case against Murad Isgandarov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 01 September 2009;
- Case against Sadraddin Gurbanov, charged under Articles 306.1, 300.1 and 196.1 of the Criminal Code – non-compliance with a final judgment or court decision, disclosure of information of preliminary investigation materials and deliberate evasion from repayment of debts, 02 September 2009;

Sumgayit City Court

- Case against Gulhuseyn Nuriyev, charged under Article 228.2.1 and 228.2.2 of the Criminal Code – repeated illegal possession of fire-arms by a group of persons, 08 April 2009;
- Case against Vali Ibrahimov, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 08 April 2009;
- Case against Nizami Balayev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 23 April 2009;
- Case against Rza Guliyev, charged under Article 178.2.4 of the Criminal Code – gross fraud, 25 June 2009;

[109] Information provided by the Project Team on the following cases at the Yasamal District Court was, however, contested by the court's Chairman, reporting that judges had read the judgments in full.

- Case against Emil Isgandarov and Abbas Namazov, charged under Articles 234.1 and 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, September 02 2009;

Shaki City Court

- Case against Alakbar Ahmadov, charged under Article 138 of the Criminal Code – illegal biomedical research, 02 April 2009;
- Case against Tarlan Abbasov, charged under Article 321.1 of the Criminal Code – unlawful avoidance of military service, 08 April 2009;
- Case against Hamid Shabanov, charged under Article 228.1 of the Criminal Code – illegal possession of fire-arms, 25 June 2009;
- Case against Turan Valiyev, charged under Article 29, 120.2.2 and 120.2.4 of the Criminal Code – attempted deliberate murder committed for hooliganism purposes and with special cruelty, 25 June 2009;

Ganja Kapaz District Court

- Case against Fuad Verdiyev, charged under Article 234.1 of the Criminal Code – illegal possession of drugs, 02 April 2009;

Mingachevir City Court

- Case against Rauf Rahimov, charged under Article 132 of the Criminal Code – battery, 14 April 2009;

Absheron District Court

- Case against Namig Amirov, charged under Article 234.2 of the Criminal Code – illegal possession of drugs for sale purposes, 07 July 2009;

Astara District Court

- Case against Sabuhi Dadashov, charged under Article 256.1 of the Criminal Code – illegal fishing in a large amount, 16 June 2009;
- Case against Sadagat Pashayev, charged under Article 128 of the Criminal Code – deliberate causing of minor injuries, 30 June 2009;
- Case against Vidadi Abulfazov, charged under Article 132 of the Criminal Code – battery, 30 June 2009;
- Case against Gadir Baghirov, charged under Article 132 of the Criminal Code – battery, 07 July 2009;

Guba District Court

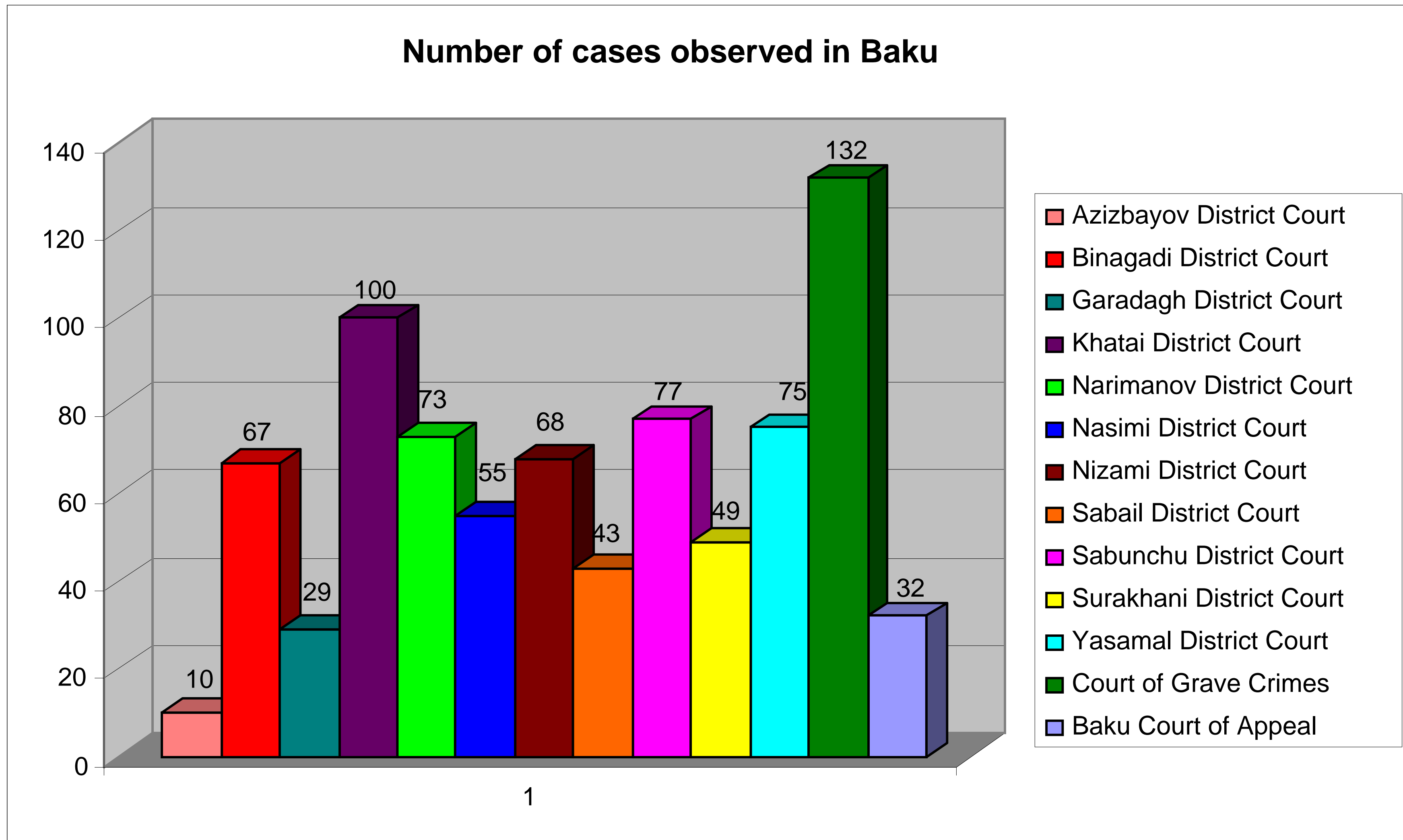
- Case against Sadraddin Khidirov, charged under Article 132 of the Criminal Code – battery, 10 June 2009;

Lankaran District Court

- Case against Ragib Ramazanov, charged under Article 132 of the Criminal Code – battery, 02 July 2009;
- Case against Oktay Gafarov, charged under Article 256.2.3 of the Criminal Code – illegal fishing on the territory of a nature reserve, or in a zone of extreme or dangerous ecological situation, 29 June 2009.

ANNEX 9

THE OSCE TRIAL MONITORING PROGRAMME IN 2009: number of cases observed in Baku for the period of 15 March – 30 December 2009



THE 2009 OSCE TRIAL MONITORING PROGRAMME: number of cases observed in the regions for the period of 15 March – 30 December 2009